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Department of Military Affairs created — appointment of Adjutant General, 2-15-1201 through 2-15-1203.

Part 1

General Provisions

10-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Militia" means all the military forces of this state, whether organized or active or inactive.

(2) "National guard" means the army national guard and the air national guard.

(3) "Officer" means commissioned or warrant officer.

(4) "Department" means department of military affairs.

History: **En. 77-1601 by Sec. 25, Ch. 94, L. 1974; amd. Sec. 7, Ch. 49, L. 1977; R.C.M. 1947, 77-1601.**

Cross-References

Department of Military Affairs created, 2-15-1201.

10-1-102. Powers and duties of department of military affairs. Under the direction of the governor, the department shall:

(1) keep a roster of all officers and enlisted persons of the militia of this state whether active, inactive, or retired;

(2) supervise, administer, and coordinate civil defense and disaster control activities;

(3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) maintain the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;

(5) establish and maintain the headquarters required for the militia;

(6) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations.

History: **En. 77-1606 by Sec. 30, Ch. 94, L. 1974; amd. Sec. 8, Ch. 49, L. 1977; R.C.M. 1947, 77-1606.**

Cross-References

Montana Historical Society directed to store certain war records, 22-3-221.

10-1-103. Classes of militia. The classes of the militia are:

(1) the organized militia, which consists of the national guard and the Montana home guard;

(2) the unorganized militia, which consists of the members of the militia who are not members of the organized militia.

History: **En. 77-1602 by Sec. 26, Ch. 94, L. 1974; R.C.M. 1947, 77-1602.**

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

"Militia" defined, 10-1-101.

Composition of home guard, 10-1-701.

10-1-104. Federal regulations to govern. Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including The Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32, U.S.C.

History: **En. 77-1603 by Sec. 27, Ch. 94, L. 1974; R.C.M. 1947, 77-1603; amd. Sec. 1, Ch. 430, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted the "including" clause at end.

10-1-105. Rules by governor. The governor may prescribe rules to carry out his functions and duties under this title and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

History: En. 77-1604 by Sec. 28, Ch. 94, L. 1974; R.C.M. 1947, 77-1604.

Cross-References

State militia exempt from public participation and administrative procedures concerning rulemaking, 2-3-102, 2-4-102.

10-1-106. Proclamation of martial rule. When the militia is employed in aid of civil authority, the governor may by proclamation declare any part of a county or municipality in which troops are serving to be subject to martial rule.

History: En. 77-1605 by Sec. 29, Ch. 94, L. 1974; R.C.M. 1947, 77-1605.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Limitations on powers of militia, 10-3-102.

Governor as commander-in-chief during emergencies, 10-3-305.

10-1-107. Property remains public property. All property issued to organizations and members of the organized militia remains public property.

History: En. 77-2001 by Sec. 51, Ch. 94, L. 1974; R.C.M. 1947, 77-2001.

Cross-References

Damage or destruction of public property unlawful, 45-6-101.

10-1-108. Armories. (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.

History: En. 77-2006 by Sec. 56, Ch. 94, L. 1974; R.C.M. 1947, 77-2006.

Cross-References

Use of armories by home guard, 10-1-703.

10-1-109. Lease of real property for military facilities. The department of military affairs may lease real property for armories or other military facilities.

History: En. 77-2007 by Sec. 57, Ch. 94, L. 1974; R.C.M. 1947, 77-2007.

Cross-References

Use of armories by home guard, 10-1-703.

10-1-110. License plates for national guardsmen. (1) In lieu of the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard license plates to be numbered in sets of two with a different number following the letters "NG". Plates shall be furnished by the division of motor vehicles to the county treasurer and by him issued to the members of the active guard. The adjutant general shall issue a certificate authorizing each active member of the national guard one set of such plates, and the member shall surrender the plates upon becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every 5 years or when lost, destroyed, or damaged.

(2) Each active member of the national guard who receives special license plates under subsection (1) is liable for payment of all taxes and fees required under Title 61, chapter 3, parts 3 and 5.

History: En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967; R.C.M. 1947, 53-106.7; amd. Sec. 1, Ch. 306, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (1) substituted "lieu of" for "addition to"; near middle of first sentence after "guard" deleted "distinctive"; after "license plates" deleted "bearing the words "national guard" and "Montana", said plates"; in second sentence of (1) substituted "county treasurer" for "adjutant general"; in third sentence of (1) after "general shall" substituted "issue a certificate authorizing each active member of the national guard one set of such plates, and" for "inform the division of motor vehicles of each set so issued, giving the number of the license, the name, unit, and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the division upon"; near end of third sentence of (1) after "the member" inserted "shall surrender the plates upon"; near end of (1) after "mounted on the vehicle" deleted "over the regular license plate"; and inserted (2).

Cross-References

Servicemen and women to be given special consideration, Art. II, sec. 35, Mont. Const.

Disabled veterans to receive free license plates, 10-2-301 through 10-2-304.

Part 2

Officers of Militia

10-1-201. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board and the nature and scope of examinations shall be prescribed by federal law or regulation or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office or until he is regularly retired, discharged, dismissed, or placed in the reserve.

History: En. 77-1701 by Sec. 31, Ch. 94, L. 1974; R.C.M. 1947, 77-1701.

Cross-References

Performance of notarial acts by military officers, 1-5-105.

Militia officers commissioned by the Governor, 2-16-204.

"Officer" defined, 10-1-101.

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

Authority to arrest, 10-1-611, 10-1-612.

Medical officers exempt from medical license requirements, 37-3-103(1)(i).

10-1-202. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office:

"I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of .... in the .... upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office and a new appointment shall be made.

History: En. 77-1702 by Sec. 32, Ch. 94, L. 1974; R.C.M. 1947, 77-1702.

Cross-References

Oath of enlistment, 10-1-302.

10-1-203. Retirement of officers. (1) An officer of the national guard shall be retired by order of the governor for the following reasons:

(a) upon reaching his 60th birthday; or

(b) his unfitness for military service because of a physical disability.

(2) An officer is retired with the grade and rank held by him at the time of retirement.

History: En. 77-1703 by Sec. 33, Ch. 94, L. 1974; R.C.M. 1947, 77-1703.

Cross-References

Examination as to fitness for military service, 10-1-206.

Members of National Guard considered state employees, 19-3-402.

Election to qualify military service under Public Employees' Retirement System, 19-3-503.

10-1-204. Resignation of officers. An officer may resign, but the resignation is not effective until it has been accepted by the governor.

History: En. 77-1704 by Sec. 34, Ch. 94, L. 1974; R.C.M. 1947, 77-1704.

Cross-References

Governor to commission all militia officers, 2-16-204.

Governor to appoint all militia officers, 10-1-201.

10-1-205. Vacating commissions or warrants. The commission or warrant of an officer shall be vacated:

(1) upon acceptance by the governor of the resignation of the officer; or

(2) by an order of the governor discharging the officer:

(a) for failure to maintain his qualifications for federal recognition;

(b) upon the scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;

(c) upon a change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;

(d) for his absence from duty without leave for more than 3 months; or

(e) upon the recommendation of a board of examination or the sentence of a court-martial.

History: En. 77-1705 by Sec. 35, Ch. 94, L. 1974; amd. Sec. 9, Ch. 49, L. 1977; R.C.M. 1947, 77-1705.

Cross-References

Federal regulations to govern militia, 10-1-104.

Persons subject to jurisdiction of military courts, 10-1-402.

10-1-206. Examination as to fitness — board of examination. (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

(b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under 10-1-205(2)(e).

(2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or his retirement because of a physical inability to perform active service.

(3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

History: En. 77-1706 by Sec. 36, Ch. 94, L. 1974; R.C.M. 1947, 77-1706.

Cross-References

National Guard officers retired by Governor, 10-1-203.

10-1-207. Uniform allowance for officers. (1) Every officer of the organized militia shall, within 60 days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.

(2) There shall be paid annually on April 1 a uniform allowance to each properly uniformed and equipped officer of the organized militia.

History: En. 77-1707 by Sec. 37, Ch. 94, L. 1974; R.C.M. 1947, 77-1707.

Cross-References

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

10-1-208. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

History: En. 77-1708 by Sec. 38, Ch. 94, L. 1974; R.C.M. 1947, 77-1708.

Cross-References

Depriving members of organized militia of employment, 10-1-603.

Leave of absence for public employees attending military training, 10-1-604.

Part 3

Enlisted Members

10-1-301. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, reenlistments, and extension of enlistments shall be for periods as prescribed by the department.

History: En. 77-1801 by Sec. 39, Ch. 94, L. 1974; R.C.M. 1947, 77-1801.

Cross-References

Governor authorized to extend terms of enlistment, 10-1-303.

Pay and allowances, 10-1-502.

10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this .... day of .... in the .... of the United States and the state of Montana for a period of .... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

History: En. 77-1802 by Sec. 40, Ch. 94, L. 1974; R.C.M. 1947, 77-1802; amd. Sec. 2, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: Twice in (2), substituted "officer" for "commissioned officer".

Cross-References

Officer's oath, 10-1-202.

10-1-303. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until 6 months after the termination of that emergency.

History: En. 77-1803 by Sec. 41, Ch. 94, L. 1974; R.C.M. 1947, 77-1803.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-304. Retirement of enlisted members. An enlisted member of the national guard shall be retired by order of the governor for the following reasons:

(1) upon reaching his 60th birthday; or

(2) his unfitness for military service because of a physical disability.

History: En. 77-1804 by Sec. 42, Ch. 94, L. 1974; R.C.M. 1947, 77-1804.

Cross-References

Members of National Guard considered state employees, 19-3-402.

Election to qualify military service under Public Employees' Retirement System, 19-3-503.

Part 4

Military Courts

10-1-401. Courts — composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

History: En. 77-1901 by Sec. 43, Ch. 94, L. 1974; R.C.M. 1947, 77-1901.

Cross-References

Federal regulations to govern, 10-1-104.

Rules by Governor, 10-1-105.

10-1-402. Persons subject. All members of the organized militia and all other persons lawfully called, ordered, or drafted for duty in the organized militia are subject to this part from the dates they are required by the terms of the call, order, or other directive to serve.

History: En. 77-1902 by Sec. 44, Ch. 94, L. 1974; R.C.M. 1947, 77-1902.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

10-1-403. Territorial applicability. (1) This part is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

History: En. 77-1903 by Sec. 45, Ch. 94, L. 1974; R.C.M. 1947, 77-1903.

Cross-References

Cession and retrocession of state jurisdiction generally, Title 2, ch. 1, part 2.

State criminal jurisdiction, 46-2-101.

10-1-404. Persons authorized to execute process. All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute it and make return thereof to the officer issuing it.

History: En. 77-1904 by Sec. 46, Ch. 94, L. 1974; R.C.M. 1947, 77-1904.

Cross-References

Service of process on military reservations, 2-1-204.

Return of process generally, Title 25, ch. 3, part 6.

10-1-405. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court and shall confine him in accordance with the direction of the court.

History: En. 77-1905 by Sec. 47, Ch. 94, L. 1974; R.C.M. 1947, 77-1905.

10-1-406. Reporter and witness fees. A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as provided by law for similar services in civil courts.

History: En. 77-1906 by Sec. 48, Ch. 94, L. 1974; R.C.M. 1947, 77-1906.

Cross-References

District Court reporter's salary and expenses, 3-5-602.

Cost of copies of proceedings, 3-5-604.

Fee for court reporter, 25-1-202.

Witness fees generally, Title 26, ch. 2, part 5.

10-1-407. Fees of civil officers — records. Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

History: En. 77-1907 by Sec. 49, Ch. 94, L. 1974; R.C.M. 1947, 77-1907.

Cross-References

Sheriff's fees for service of process and other papers, 7-32-2141.

10-1-408. Trial by civil authority — when authorized. In a case where the offense charged is also an offense against civil authority, the convening authority of a court-martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

History: En. 77-1908 by Sec. 50, Ch. 94, L. 1974; R.C.M. 1947, 77-1908.

Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1, part 1.

Cession and retrocession of jurisdiction by state, Title 2, ch. 1, part 2.

State criminal jurisdiction, 46-2-101.

State sovereignty in space, 67-1-202.

Part 5

Pay and Pension for Militia

10-1-501. Pay for activated militia from general fund. When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

History: En. 77-2002 by Sec. 52, Ch. 94, L. 1974; R.C.M. 1947, 77-2002.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-502. Pay and allowances. (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

History: En. 77-2003 by Sec. 53, Ch. 94, L. 1974; R.C.M. 1947, 77-2003.

Cross-References

Extension of terms of service, 10-1-303.

Pay, allowances, pensions, and benefits of the home guard, 10-1-704.

Military pay exempt from state taxation, 15-30-116.

10-1-503. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of his command.

History: En. 77-2004 by Sec. 54, Ch. 94, L. 1974; R.C.M. 1947, 77-2004.

10-1-504. Repealed. Sec. 13, Ch. 430, L. 1983.

History: En. 77-2005 by Sec. 55, Ch. 94, L. 1974; R.C.M. 1947, 77-2005.

Part 6

Rights of and Duties Owed Militia

Part Cross-References

Servicemen to be given special consideration, Art. II, sec. 35, Mont. Const.

Militia members exempt from civil arrest, 46-6-102.

10-1-601. Actions against militia members — attorney's fees. When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

History: En. 77-2101 by Sec. 58, Ch. 94, L. 1974; R.C.M. 1947, 77-2101.

10-1-602. Right-of-way while performing military duty. (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail or with the progress of an ambulance or members of a police or fire department.

(3) A person who fails to yield the right-of-way as prescribed by this section is guilty of a misdemeanor.

History: En. 77-2102 by Sec. 59, Ch. 94, L. 1974; amd. Sec. 10, Ch. 49, L. 1977; R.C.M. 1947, 77-2102.

Cross-References

Arrest of trespassers and disturbers, 10-1-612.

Place of imprisonment when none specified, 46-18-211.

Misdemeanor penalty when no penalty is specified, 46-18-212.

10-1-603. Depriving members of organized militia of employment. (1) A person may not willfully deprive a member of the organized militia of his employment or prevent his being employed or obstruct or annoy a member in respect to his trade, business, or employment because he is a member of the organized militia.

(2) A person may not dissuade any person from enlisting in the organized militia by threatening to injure or injuring his business, employment, or trade.

History: En. 77-2103 by Sec. 60, Ch. 94, L. 1974; R.C.M. 1947, 77-2103(1), (2).

Cross-References

Misdemeanor violation, 10-1-615.

10-1-604. Leave of absence of public employees attending training camp or similar training program. A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

History: En. 77-2104 by Sec. 61, Ch. 94, L. 1974; R.C.M. 1947, 77-2104.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Reemployment of veterans, 10-2-211.

Reemployment of public employee upon completion of service, 10-2-221.

10-1-605. Suspension of license fees for persons in military service. (1) The collection from any person in the military service of the United States, as defined by the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, as amended October 6, 1942, of any license fee or privilege fee or charge or tax for and as a prerequisite for carrying on any personal service occupation or any profession, annually, or for any other period of time, whether falling due prior to or during his period of military service, shall not be made for the period or any part thereof during which such person was in military service and for an additional period of 6 months after the termination of his period of military service, if such person were not actually professing, carrying on, and practicing his profession, avocation, or occupation in the state of Montana during such period as herein extended; and such person or licensee shall not be liable for such license fee, privilege fee, tax, or personal service charge for any period during which said conditions obtain.

(2) The status, standing, and right of any such person or licensee under any of the laws of the state of Montana shall remain in the same force and effect in which said status, right, and standing existed at the time such person entered the military service of the United States, and for the whole period of such military service, and for an additional period of 6 months after the termination of said period of military service. At the end of said extended period said person shall be deemed to be and shall stand fully and completely restored to all the rights, privileges, of his profession, avocation, or occupation, to all intents and purposes as if he had not been absent in military service and had been regularly carrying on his profession, avocation, and occupation and regularly paying all fees and charges due for the same. After the termination of said extended period, 6 months following termination of his military service, said person shall be subject for the next ensuing annual period or any part thereof and regularly thereafter to all license fees, privilege fees, charges, and taxes then lawfully collectible pursuant to law.

History: En. Sec. 1, Ch. 106, L. 1943; R.C.M. 1947, 84-5301.

Cross-References

Military pay exempt from state taxation, 15-30-116.

10-1-606. Suspension of property taxes for persons in military service. (1) All taxes, whether on real or personal property, due on property owned by any citizen of the state of Montana in the active military or naval service of the United States shall be held in abeyance, no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto until the expiration of the period of 1 year from and after the cessation of hostilities or discharge from military or naval service.

(2) To obtain the benefits of this section it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this section shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered.

History: (1)En. Sec. 1, Ch. 14, Ex. L. 1918; re-en. Sec. 2236, R.C.M. 1921; re-en. Sec. 2236, R.C.M. 1935; Sec. 84-41-103, R.C.M. 1947; (2)En. Sec. 2, Ch. 14, Ex. L. 1918; re-en. Sec. 2237, R.C.M. 1921; re-en. Sec. 2237, R.C.M. 1935; Sec. 84-41-104, R.C.M. 1947; R.C.M. 1947, 84-41-103, 84-41-104.

Cross-References

Military pay exempt from state taxation, 15-30-116.

10-1-607 through 10-1-610 reserved.

10-1-611. Authority of commanding officer to arrest. The commanding officer at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

History: En. 77-2105 by Sec. 62, Ch. 94, L. 1974; R.C.M. 1947, 77-2105.

Cross-References

Militia members exempt from civil arrest, 46-6-102.

10-1-612. Arrest of trespassers and disturbers. (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who:

(a) interrupts, molests, or disturbs the orderly discharge of duty by those under arms;

(b) disturbs or prevents the passage of troops going to or returning from any duty; or

(c) assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person committing an offense for which an arrest may be made pursuant to this section is guilty of a misdemeanor.

History: En. 77-2106 by Sec. 63, Ch. 94, L. 1974; amd. Sec. 11, Ch. 49, L. 1977; R.C.M. 1947, 77-2106.

Cross-References

Right-of-way while performing military duty, 10-1-602.

Definition of assault, 45-5-201.

Place of imprisonment when none specified, 46-18-211.

Penalty when none specified, 46-18-212.

10-1-613. Unlawful sale or detention of military property. A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia.

History: En. 77-2107 by Sec. 64, Ch. 94, L. 1974; R.C.M. 1947, 77-2107(part).

Cross-References

Property remains public property, 10-1-107.

Unlawful sale as misdemeanor, 10-1-615.

Damage or destruction of public property unlawful, 45-6-101.

Definition of theft, 45-6-301.

10-1-614. Unlawful wearing of uniform. A person who is not a member of the organized militia may not wear the uniform or insignia issued or authorized for use by the organized militia.

History: En. 77-2108 by Sec. 65, Ch. 94, L. 1974; R.C.M. 1947, 77-2108(part).

10-1-615. Misdemeanor violations. A person who violates 10-1-603, 10-1-613, or 10-1-614 is guilty of a misdemeanor.

History: Ap. p. Sec. 60, Ch. 94, L. 1974; Sec. 77-2103, R.C.M. 1947; Ap. p. Sec. 64, Ch. 94, L. 1974; Sec. 77-2107, R.C.M. 1947; Ap. p. Sec. 65, Ch. 94, L. 1974; Sec. 77-2108, R.C.M. 1947; R.C.M. 1947, 77-2103(3), 77-2107(part), 77-2108(part).

Cross-References

Place of imprisonment when none is specified, 46-18-211.

Misdemeanor penalty when no penalty is specified, 46-18-212.

Part 7

Home Guard

10-1-701. Home guard — organization and composition. The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

History: En. 77-2201 by Sec. 66, Ch. 94, L. 1974; R.C.M. 1947, 77-2201.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

Classes of militia, 10-1-103.

Rules by Governor, 10-1-105.

10-1-702. Gubernatorial rules for guard. The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

History: En. 77-2202 by Sec. 67, Ch. 94, L. 1974; R.C.M. 1947, 77-2202.

Cross-References

Federal regulations to govern, 10-1-104.

Rules by Governor, 10-1-105.

10-1-703. Use of armories and equipment. The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government, for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

History: En. 77-2203 by Sec. 68, Ch. 94, L, 1974; R.C.M. 1947, 77-2203.

Cross-References

Armories, 10-1-108.

Lease of real property for military facilities, 10-1-109.

10-1-704. Pay, allowances, pensions, and benefits. An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under 10-1-502.

History: En. 77-2204 by Sec. 69, Ch. 94, L. 1974; R.C.M. 1947, 77-2204; amd. Sec. 3, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (2), which provided: "A member of the home guard who is wounded, disabled, or dies while on active duty in the service of this state shall receive the same pensions and benefits as prescribed for members of the organized militia under 10-1-504."

Part 8

National Guard Reenlistment or Extension Incentive

10-1-801. Short title. This part may be cited as the "Montana National Guard Reenlistment or Extension Act of 1981".

History: En. Sec. 1, Ch. 506, L. 1981.

10-1-802. Purpose. This part is intended to encourage a greater number of extensions and reenlistments in the Montana national guard, which is the state's only source of organized manpower in times of emergency.

History: En. Sec. 2, Ch. 506, L. 1981.

10-1-803. Definitions. As used in this part, the following definitions apply:

(1) "Bonus" means the extension or reenlistment incentive bonus provided by this part.

(2) "Member" means any enlisted member of the Montana army or air national guard.

(3) "Extension" means the continuation of active national guard service with the Montana national guard.

(4) "Reenlistment" means a second or subsequent voluntary enrollment in the Montana national guard.

(5) "Secretary" means a designee of the department of military affairs.

History: **En. Sec. 3, Ch. 506, L. 1981.**

10-1-804. Bonus. A member is entitled to receive a bonus payment for each year of service for which he extends or reenlists. The bonus shall be paid to each eligible member within 60 days following the successful completion of a year of service for which he extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose.

History: **En. Sec. 4, Ch. 506, L. 1981.**

10-1-805. Eligibility. The bonus must be granted to a person who:

(1) extends his original enlistment or reenlists in the Montana national guard;

(2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;

(3) does not have 20 years of total service;

(4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;

(5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by this part; and

(6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid.

History: **En. Sec. 5, Ch. 506, L. 1981.**

10-1-806. Administration. (1) The secretary shall administer this part. He shall maintain records and make rules necessary for its administration.

(2) He shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility.

History: **En. Sec. 6, Ch. 506, L. 1981.**

CHAPTER 2

VETERANS

Part 1 — Board of Veterans' Affairs

Section
10-2-101. Definition.
10-2-102. Duty of board — employee qualifications.
10-2-103. Seal — acknowledgments — officers.
10-2-104. Aid by state, county, and municipal officers.
10-2-105. Extra compensation for service forbidden.
10-2-106. Acceptance of federal funds.
10-2-107. Contracts for federal reimbursement funds.

Part 2 — Employment

10-2-201. Purpose.

10-2-202. Definitions.
10-2-203. Preference in appointment and employment.
10-2-204. Credit for examination.
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10-2-207 through 10-2-210 reserved.
10-2-211. Reemployment of veterans upon completion of service.
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10-2-501. Burial allowance for military.
10-2-502. County of residence to pay expense.
10-2-503. Report of expenses by burial supervisor.
10-2-504. Duty of clerk.
10-2-505. No compensation for burial supervisor.
10-2-506. Not to apply to nonresidents.

Chapter Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Part 1

Board of Veterans' Affairs

Part Cross-References

Board of Veterans' Affairs created, 2-15-1205.

10-2-101. Definition. Unless the context requires otherwise, in this part "board" means the board of veterans' affairs provided for in 2-15-1205.

History: En. Sec. 36, Ch. 121, L. 1974; R.C.M. 1947, 71-2201; amd. Sec. 3, Ch. 271, L. 1983.

Compiler's Comments

1983 Amendment: Substituted 2-15-1205 for 2-15-2202.

10-2-102. Duty of board — employee qualifications. (1) The board shall establish a statewide service for discharged veterans and their families, actively cooperate with state and federal agencies having to do with the affairs of veterans and their families, and promote the general welfare of all veterans and their families.

(2) Employees of the board must be residents of this state. Whenever possible all employees of the board shall have served in the military forces of the United States during World War I, World War II, or the Korean or the Vietnam conflicts and shall have been honorably discharged therefrom. Preference for employment shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971; Sec. 77-1002, R.C.M. 1947; amd. and redes. by Sec. 37, Ch. 121, L. 1974; amd. Sec. 39, Ch. 535, L. 1975; R.C.M. 1947, 71-2202.

Cross-References

Rules for determining residence, 1-1-215.

10-2-103. Seal — acknowledgments — officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a chairman, a vice-chairman, and a secretary.

History: En. Sec. 5, Ch. 111, L. 1945; Sec. 77-1005, R.C.M. 1947; amd. and redes. by Sec. 38, Ch. 121, L. 1974; R.C.M. 1947, 71-2203.

10-2-104. Aid by state, county, and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945; Sec. 77-1006, R.C.M. 1947; amd. and redes. by Sec. 39, Ch. 121, L. 1974; R.C.M. 1947, 71-2204.

10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945; Sec. 77-1007, R.C.M. 1947; amd. and redes. by Sec. 40, Ch. 121, L. 1974; R.C.M. 1947, 71-2205.

Cross-References

Misdemeanor penalty when no penalty is specified, 46-18-212.

10-2-106. Acceptance of federal funds. The board may accept from the federal government or any agencies thereof any funds made available to carry out purposes within the scope of the activities and purposes of the board and accept such funds as the board directs.

History: En. Sec. 1, Ch. 256, L. 1947; Sec. 77-1009, R.C.M. 1947; amd. and redes. by Sec. 41, Ch. 121, L. 1974; R.C.M. 1947, 71-2206.

10-2-107. Contracts for federal reimbursement funds. The governor of this state and the chairman and secretary of the board may sign contracts with the federal government or any agency thereof for the reimbursement of the board for any work which the board may do for which any federal statute provides reimbursement to the states.

History: En. Sec. 2, Ch. 256, L. 1947; Sec. 77-1010, R.C.M. 1947; amd. and redes. by Sec. 42, Ch. 121, L. 1974; R.C.M. 1947, 71-2207.

Part 2

Employment

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Prohibited discriminatory practices, Title 49, ch. 2, part 3.

10-2-201. Purpose. The purpose of 10-2-201 through 10-2-206 is to provide for preference of veterans, their dependents and unremarried surviving spouses, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(1).

Cross-References

Enforcement of preference, 10-2-206.

10-2-202. Definitions. For purposes of 10-2-201 through 10-2-206, the following definitions apply:

(1) The term "veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon conditions other than dishonorable; or

(b) who after January 31, 1955:

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and

(ii) were honorably discharged.

(2) The term "war or declared national emergency" includes:

(a) The Civil War;

(b) The Spanish-American War;

(c) The Philippine insurrection;

(d) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

(e) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive;

(f) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and

(g) The Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive.

(3) The term "surviving spouse" means an unremarried surviving spouse of a veteran.

(4) The word "percent" means percent of the total aggregate points of the examination referred to.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(2); amd. Sec. 1, Ch. 142, L. 1979; amd. Sec. 1, Ch. 5, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "including but not limited to those veterans serving because of the Vietnam conflict" in (1)(b)(i); added subsection (2)(g).

Cross-References

Enforcement of preference, 10-2-206.

10-2-203. Preference in appointment and employment. (1) In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment and employment: veterans, their spouses and surviving spouses, and the other dependents of disabled veterans and disabled civilians recommended by the rehabilitative services division of the department of social and rehabilitation services.

(2) Age, loss of limb, or other physical impairment which does not in fact incapacitate does not disqualify any disabled veteran or civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved.

(3) Those of the above-described veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of the wars, military expeditions, or police actions, whenever such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(3).

Cross-References

Enforcement of preference, 10-2-206.

Preference of Montana labor in public works, 18-2-403.

10-2-204. Credit for examination. (1) When written or oral examinations are required for employment, disabled veterans and their spouses, their surviving spouses, and other dependents shall have added to their examination ratings a credit of 10 points. All other veterans, their spouses, surviving spouses, and dependents shall have added to their examination ratings a credit of 5 points.

(2) The fact that an applicant has claimed a veterans' credit may not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit.

(3) The benefits of this section are in addition to and not in derogation of the preference in appointment and employment or both given by 10-2-203.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(4).

Cross-References

Enforcement of preference, 10-2-206.

10-2-205. Eligibility. (1) None of the benefits of 10-2-201 through 10-2-206 accrue to any person who refused to serve on active duty in the military service to which attached or to take up arms in the defense of the United States.

(2) No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment is entitled to such preference.

(3) For city or county employment, no preference will be granted unless an applicant under 10-2-201 through 10-2-206 is also a resident of the city or town or county in which employment is sought.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(5).

Cross-References

Rule for determining residence, 1-1-215.

10-2-206. Enforcement of preference. Any person entitled to preference in 10-2-201 through 10-2-206 who has applied for any appointment or employment upon public works of the state of Montana or any county and city thereof or in any public department of the state and who has been denied employment or appointment and feels that the spirit of 10-2-201 through 10-2-206 has been violated and that such person is in fact qualified physically and mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for may petition by verified petition the district court of the state of Montana in the county in which the work is to be performed. The petition shall set forth the facts of the application, qualifications, competency, and such person's honorable discharge or other qualifications warranting the applicant to preference under 10-2-201 through 10-2-206. Upon filing of such petition, any judge in the court shall issue an order to show cause to the appointing authority directing the appointing authority to appear in the court at a specified time and place, not less than 5 or more than 10 days after the filing of the verified petition, to show cause, if any exists, why the veteran or person entitled to preference should not be employed by the appointing authority. The district court has jurisdiction upon the proper showings to issue its order directing and ordering the appointing authority to comply with this law in giving the preference provided for.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943;

amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(6).

10-2-207 through 10-2-210 reserved.

10-2-211. Reemployment of veterans upon completion of service. (1) Any person inducted into the armed forces of the United States as a result of the operation of any selective training and service act or national guard and reserve officers mobilization act since 1948 who has satisfactorily completed his period of training or service as attested by a certificate to that effect shall be reemployed in the position he left in order to perform such training or service if:

(a) he is still qualified to perform the duties of the position;

(b) the position he formerly held was not a temporary one; and

(c) he makes application for reemployment within 40 days after he is retired from training or service.

(2) Should any person qualified for reemployment be a schoolteacher or instructor, the board of trustees or other employing agency of the school involved is not obligated to rehire the person until the beginning of the semester or quarter following the one in which the application for reemployment was made.

History: En. Sec. 1, Ch. 150, L. 1941; amd. Sec. 1, Ch. 209, L. 1951; R.C.M. 1947, 77-601; amd. Sec. 2, Ch. 142, L. 1979.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Leave of absence for public employees attending training camp, 10-1-604.

Restoration of benefits, 10-2-213.

Enforcement procedure, 10-2-214.

10-2-212. Private employer's duty. If such person was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. Sec. 2, Ch. 150, L. 1941; R.C.M. 1947, 77-602.

Cross-References

Restoration of benefits, 10-2-213.

10-2-213. Restoration of benefits. Any person who is restored to a position in accordance with 10-2-211 or 10-2-212 shall be considered as having been on leave of absence during the period of training or service in the armed forces of the United States and at the expiration of the period shall be entitled to be restored to his employment without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer in accordance with established rules and practices relating to employees on leave of absence, and shall not be discharged from the position without cause within 1 year after restoration.

History: En. Sec. 3, Ch. 150, L. 1941; R.C.M. 1947, 77-603; amd. Sec. 3, Ch. 142, L. 1979.

10-2-214. Enforcement procedure. In case any private employer refuses to reemploy any person entitled to reemployment under the provisions of 10-2-211 through 10-2-214, the district court of the judicial district in which such private employer maintains his place of business has power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to such benefits, to specifically require such employer to comply with 10-2-211 through 10-2-214, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by such employer's unlawful action. Upon application to the county attorney of the county in which such private employer maintains a place of business by any person claiming to be entitled to redress under 10-2-211 through 10-2-214, the county attorney shall appear and act as attorney for such person in the amicable settlement of the claim or in the filing of any motion, petition, or other appropriate pleading to specifically require such employer to comply with such provisions. No fees or court costs may be taxed against the person applying for such benefits.

History: **En. Sec. 4, Ch. 150, L. 1941; amd. Sec. 5, Ch. 49, L. 1977; R.C.M. 1947, 77-604.**

10-2-215 through 10-2-220 reserved.

10-2-221. Reemployment of public employee upon completion of service. Any person inducted into the armed forces of the United States or any member of any reserve component of the armed forces or national guard or any retired personnel ordered into the active military service of the United States who, in order to perform such training, service, or active duty, leaves a position, other than a temporary position, in the employ of the state or any political subdivision thereof and who receives a certificate of completion of training or service from the proper authorities of the United States government and is still qualified to perform the duties of such position shall be restored to:

(1) the position or to a position of like seniority, status, and pay if the position was in the employ of the state or any political subdivision thereof, excluding elective positions, and the position or department has not been abolished or consolidated; or

(2) the position, status, and pay at any time during the term for which he was elected if the position was that of an elected, executive, or judicial officer of the state or any political subdivision thereof.

History: **En. Sec. 1, Ch. 47, L. 1941; R.C.M. 1947, 77-701; amd. Sec. 4, Ch. 142, L. 1979.**

Cross-References

Officer not required to vacate civil office, 10-1-208.

Depriving members of organized militia of employment, 10-1-603.

Leave of absence for public employee during training, 10-1-604.

Reemployment of veterans, 10-2-211.

Enforcement, 10-2-226.

Appointment of acting public officer, 10-2-227.

Absence for military duty not to create vacancy in office, 10-2-228.

10-2-222. Application for reemployment. A person asking restoration to a position in accordance with the provisions of 10-2-221(1) shall, in order to qualify for the restoration of such position, make application for reemployment within 40 days after he is relieved from such training and service. Such application must be in writing and presented to the officer, district, board, or employing unit of the state or political subdivision thereof by which such applicant was formerly employed.

History: **En. Sec. 2, Ch. 47, L. 1941; R.C.M. 1947, 77-702.**

Cross-References
Enforcement, 10-2-226.

10-2-223. Application for reinstatement of officer. A person seeking restoration to an elective office in accordance with the provisions of 10-2-221(2) shall, in order to qualify under the provisions of that section, make application for reinstatement to such office within 40 days after he is relieved from such training and service. Such applications must be in writing and presented to the governor in the case of state elective offices and to the board of county commissioners in the case of county, township, or district offices.

History: En. Sec. 3, Ch. 47, L. 1941; R.C.M. 1947, 77-703.

10-2-224. Reinstatement for remainder of term. Any person who is restored to a position in accordance with the provisions of 10-2-221(2) shall be considered as having been on leave of absence during his period of active military service and shall be immediately so restored to his official position as such officer for the balance of the term for which he was elected.

History: En. Sec. 5, Ch. 47, L. 1941; R.C.M. 1947, 77-705.

10-2-225. No loss of seniority or benefits. Any person who is restored to a position in accordance with the provisions of 10-2-221(1) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority (if seniority rules are applicable in such particular position), shall be entitled to participate in any insurance or other benefits offered by the state of Montana or the political subdivision thereof pursuant to established rules and practices relating to employees on furlough or on leave of absence in effect at the time such person is ordered into such service and, except as otherwise provided herein, shall not be discharged from such position without cause within 1 year after such restoration.

History: En. Sec. 4, Ch. 47, L. 1941; R.C.M. 1947, 77-704.

10-2-226. Enforcement. In case of any failure or refusal by any officer, board, department, or employing unit of the state or any political subdivision thereof to comply with the provisions of 10-2-221, 10-2-224, or 10-2-225, the district court of the state of Montana for the county in which such person seeking restoration of position resides shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of these provisions, to specifically require such officer, department, board, or employing unit to comply with such provision for any loss of wages or benefits suffered by reason of such an unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the county attorney of the county in which the applicant resides in the case of county, township, and district offices and positions and to the attorney general of the state of Montana in the case of state offices and positions, by any person claiming to be entitled to the benefits of such provisions, such county attorney or attorney general, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and prosecution thereof to specifically require a compliance with such provisions; provided that no fees or court costs shall be taxed against the person so applying for such benefits.

History: En. Sec. 6, Ch. 47, L. 1941; R.C.M. 1947, 77-706.

10-2-227. Acting officer — how appointed. The governor, in the case of district judges and officers elected from the state at large, and the board of county commissioners, in the case of members of either house of the legislature and county, township, or district officers elected from such county, shall appoint an "acting" officer to temporarily replace any elected officer, designated in 10-2-221(2), who enters military service in the manner set forth in 10-2-221. "Acting" officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes, and such appointment shall be subject to the right of the elected officer to the restoration of his position.

History: En. Sec. 7, Ch. 47, L. 1941; amd. Sec. 6, Ch. 49, L. 1977; R.C.M. 1947, 77-707.

10-2-228. Absence for military service creates no vacancy in office. It is specifically provided that the provisions of 2-16-112, subsections (5), (6), and (7) of 2-16-501, and 7-4-2208, shall not be, and the same are declared not to be, applicable insofar as they relate to absence or residence of any officer of the state or political subdivision thereof caused by the military service of such officer as set forth in 10-2-221. It is specifically declared that the absence of such officer caused by such military service shall not create a vacancy in the office to which he was elected.

History: En. Sec. 8, Ch. 47, L. 1941; R.C.M. 1947, 77-708.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Leave of absence of public employee attending training, 10-1-604.

Part 3

Veterans' Benefits

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-301. License plates to disabled veterans — special inscriptions. (1) Any person who is a veteran of the armed services of the United States and 100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a citizen and resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including three-quarter ton GVW-rated capacity shall be provided with specially inscribed license plates upon payment of a fee of $5 for such automobile or truck and upon proof of 100% service-connected disability.

(2) The motor vehicle division shall assign to each veteran qualified under subsection (1) who applies according to the rules of the division a registration designation bearing the letters and character "DV-" followed by a

number matching the sequence in which the designations are assigned, and the division shall issue to the disabled veteran two special license plates bearing the inscription assigned to him.

(3) The special license plates may be reregistered or renewed upon payment of the fees required in subsection (1) and compliance with the rules of the division. **(Amendment not effective until January 1, 1984—sec. 8, Ch. 614, L. 1983.)**

History: En. Sec. 1, Ch. 215, L. 1971; amd. Sec. 1, Ch. 33, L. 1975; amd. Sec. 1, Ch. 67, L. 1977; R.C.M. 1947, 53-106.8; amd. Sec. 7, Ch. 614, L. 1981; amd. Sec. 5, Ch. 614, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (1), inserted "specially inscribed"; and inserted (2) and (3). Effective Jan. 1, 1984, sec. 8, Ch. 614, L. 1983.

1981 Amendment: Substituted "provided with license plates upon payment of a fee of $5" for "provided with free license plates upon payment of personal property tax equal to 1% of the taxable value" near the end of the section (now (1)).

Cross-References

Special license plates for National Guardsmen, 10-1-110.

Special license plates for disabled veteran or ex-prisoner of war, 61-3-443, 61-3-444.

10-2-302. Plates nontransferable. The license issued pursuant to 10-2-301 shall not be transferable.

History: En. Sec. 2, Ch. 215, L. 1971; R.C.M. 1947, 53-106.9.

10-2-303. Veterans' plates limited to one automobile or truck. No disabled veteran is entitled to license plates under 10-2-301 for more than one passenger automobile or one truck up to and including three-quarter ton GVW-rated capacity.

History: En. Sec. 3, Ch. 215, L. 1971; amd. Sec. 1, Ch. 49, L. 1977; amd. Sec. 2, Ch. 67, L. 1977; R.C.M. 1947, 53-106.10; amd. Sec. 8, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "free" before "license plates"; and inserted "under 10-2-301" after "license plates".

10-2-304. Violation a misdemeanor. Any person who violates 10-2-302 or 10-2-303 or who knowingly and wrongfully attempts to secure free license plates under 10-2-301 shall be guilty of a misdemeanor and punished by a fine of not less than $100 or imprisonment for not more than 30 days, or both.

History: En. Sec. 4, Ch. 215, L. 1971; R.C.M. 1947, 53-106.11.

10-2-305 through 10-2-310 reserved.

10-2-311. Free tuition for honorably discharged veterans. All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of this state at the time of their entry into the United States forces shall have free fees and tuition in any of the units of the Montana university system, including the law and medical departments, and for extra studies in any of the units of the Montana university system. However, this section does not apply to persons who qualify under the provisions of the "Servicemen's Readjustment Act of 1944", being Public Law 346 of the seventy-eighth congress, chapter 268, second session, and Public Law 16 of the seventy-eighth congress, chapter 22, first session, and all acts supplementary and amendatory thereof.

History: En. Sec. 1, Ch. 194, L. 1943; amd. Sec. 1, Ch. 44, L. 1945; Sec. 77-901, R.C.M. 1947; amd. and redes. 75-8611 by Sec. 4, Ch. 94, L. 1974; R.C.M. 1947, 75-8611.

Cross-References

Rules for determining residence, 1-1-215.

10-2-312. Fee waiver — children of prisoners of war and persons killed in action. (1) The board of regents of higher education may waive charges for the matriculation, tuition, and any educational fees at any of the units of the Montana university system for the children of members of the armed forces of the United States who:

(a) served on active duty during World War II or the Korean or Vietnam conflicts;

(b) had legal residence in this state at the time of entry into the service; and

(c) were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States.

(2) The educational assistance to which an eligible person is entitled under subsection (1) may be afforded him during the period beginning on his 18th birthday or on the successful completion of his secondary schooling, whichever occurs first, and ending on his 23rd birthday.

(3) If he serves on duty with the armed forces as an eligible person under subsection (1) after his 18th birthday but before his 23rd birthday, then the period ends 5 years after his first discharge or release from duty with the armed forces. This period may not be extended beyond his 31st birthday by reason of this subsection.

(4) The board of regents of higher education may waive the charges for matriculation, tuition, and all educational fees for the spouse and children of any person who is a resident of Montana and who either, while serving in the armed forces of the United States, was declared by the secretary of defense of the United States to be a prisoner of war or missing in action in connection with the conflict in Southeast Asia after January 1, 1961, or, while serving the United States in a civilian capacity, was declared by the secretary of state of the United States to be missing or captured in connection with the conflict in Southeast Asia after the same date.

(5) Any person who is eligible for the waiver of tuition and fees under subsection (4), upon being accepted for enrollment in any state-supported institution of higher education or state-supported technical or vocational school, shall continue to be eligible for the waiver until the completion of the bachelor of arts or equivalent degree or certification of completion, as long as he remains enrolled in good standing at the school or institution. No eligible person may be disqualified by either the return or the reported death of the prisoner of war or person missing in action.

History: En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, Ch. 225, L. 1969; amd. Sec. 1, Ch. 64, L. 1974; Sec. 77-909, R.C.M. 1947; amd. and redes. 75-8612 by Sec. 5, Ch. 94, L. 1974; amd. Sec. 3, Ch. 49, L. 1977; R.C.M. 1947, 75-8612; amd. Sec. 5, Ch. 142, L. 1979.

Cross-References

Rules for determining residence, 1-1-215.

10-2-313. Eligibility to be determined by board of regents. The board of regents of higher education shall determine the eligibility of a child who makes application for the benefits provided for in 10-2-312. A finding by the United States veterans administration that a member was killed in action or died as the result of injury or other disability incurred in action is binding upon the board, but in the absence of such a finding the board shall determine the facts.

History: En. Sec. 2, Ch. 141, L. 1957; Sec. 77-910, R.C.M. 1947; amd. and redes. 75-8613 by Sec. 6, Ch. 94, L. 1974; R.C.M. 1947, 75-8613.

10-2-314. Determination of attendance. The board of regents of higher education shall satisfy itself of the attendance of a child at an institution.

History: En. Sec. 3, Ch. 141, L. 1957; Sec. 77-911, R.C.M. 1947; amd. and redes. 75-8614 by Sec. 7, Ch. 94, L. 1974; R.C.M. 1947, 75-8614.

Part 4

Montana Veterans' Home

Part Cross-References

Constitutional authority for establishment, Art. XII, sec. 3, Mont. Const.

General administration of institutions, Title 53, ch. 1.

Established within Department of Institutions, 53-1-202.

10-2-401. Location and function of home — persons admitted. The institution at Columbia Falls is the "Montana veterans' home" and as its primary function provides home and subsistence for honorably discharged veterans. The department of institutions may also admit spouses or surviving spouses of honorably discharged veterans to the home if space allows.

History: En. Sec. 20, Ch. 199, L. 1965; amd. Sec. 40, Ch. 535, L. 1975; R.C.M. 1947, 80-1801.

10-2-402. Superintendent to be given veteran's preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall give preference to veterans as defined in 10-2-202.

History: En. Sec. 21, Ch. 199, L. 1965; R.C.M. 1947, 80-1802; amd. Sec. 1, Ch. 119, L. 1981.

Compiler's Comments

1981 Amendment: Changed requirement that superintendent be a veteran to requirement that veteran's preference be given in selecting superintendent.

10-2-403. Eligibility for residence in home. To be eligible for residence in the Montana veterans' home under the regulations prescribed by the department of institutions, a person must be an honorably discharged veteran or the spouse or surviving spouse of a veteran who served in the armed forces of the United States. Consideration must also be given to:

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's term of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) such other admission requirements as may be established by the department.

History: En. Sec. 22, Ch. 199, L. 1965; amd. Sec. 41, Ch. 535, L. 1975; R.C.M. 1947, 80-1803; amd. Sec. 1, Ch. 469, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence inserted "Consideration must also be given to"; and substituted (1) through (6) for: "(2) be an invalid and have become unable to earn a livelihood as a result of the disability;

(3) have resided in Montana for a period of 2 years immediately prior to making application for admittance;

(4) not have been convicted of a felony or of a crime involving moral turpitude;

(5) not be an alcoholic or have a record of habitual inebriation."

Cross-References

Rules for determining residence, 1-1-215.

10-2-404. Acceptance and deposit of federal moneys. The department of institutions may accept moneys from the federal government that become available to the state as a result of operating the Montana veterans' home and shall deposit such moneys in the state treasury for the benefit of the home. If the resident of the home is transferred to another institution, as defined in 53-1-101, the department of institutions shall continue to draw from the federal government any moneys available for the maintenance of such former resident.

History: En. Sec. 23, Ch. 199, L. 1965; R.C.M. 1947, 80-1804.

Part 5

Veterans' Burial

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-501. Burial allowance for military. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably an honorably discharged serviceman or servicewoman, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any serviceman or servicewoman who is a resident of the state of Montana and either:

(a) served in any branch of the armed services of the United States, was honorably discharged, and may hereafter die;

(b) is now serving and dies while so serving;

(c) died while in service during any declared or undeclared war; or

(d) is a resident of the Montana veterans' home at time of death.

(3) Such burial shall not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial expense shall be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death.

(5) The benefits hereof are not available in the case of any decedent whose executor, administrator, or heirs waive the benefits.

(6) Whenever burial is of a resident of the Montana veterans' home, a sum not to exceed $250 to defer burial expenses shall be paid by the county commissioners of the county in which the deceased person resided prior to admittance to the Montana veterans' home.

(7) If a person qualified under subsection (2)(a) dies while temporarily absent from the state or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

(8) Whenever a person qualified under subsection (2)(a) dies at any public institution of the state of Montana, other than the Montana veterans' home, and burial for any cause is not made in the county of the former residence of the deceased, the officers of the state institution shall provide the proper burial herein prescribed. The reimbursement for the expense of each burial may not exceed $250. The expense shall be paid by the county in which the decedent resided at the time of entry into such institution.

(9) No such burial may be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R.C.M. 1921; amd. Sec. 1, Ch. 181, L. 1931; re-en. Sec. 4536, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1937; amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967; amd. Sec. 1, Ch. 96, L. 1969; amd. Sec. 34, Ch. 535, L. 1975; amd. Sec. 2, Ch. 49, L. 1977; R.C.M. 1947, 71-120.

10-2-502. County of residence to pay expense. The expenses of such burial shall be paid by the county in which such serviceman or servicewoman dies or, if death occurs while in service, the county of his last residency. But if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. The claimant shall be a relative or guardian unless otherwise directed. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R.C.M. 1921; re-en. Sec. 4537, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1967; R.C.M. 1947, 71-121.

10-2-503. Report of expenses by burial supervisor. It shall be the duty of the person appointed as provided in 10-2-501 to cause such deceased person to be buried as provided in this part, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the deceased's name, rank, command to which the deceased belonged, so far as is known, the date of death, place of burial, occupation while living, and an itemized statement of the expenses incurred by reason of such burial.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911; re-en. Sec. 4538, R.C.M. 1921; re-en. Sec. 4538, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1967; R.C.M. 1947, 71-122.

10-2-504. Duty of clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses, to transcribe in a book to be kept for that purpose all the facts contained in such report concerning such serviceman or servicewoman. It shall also be the duty of the clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone as provided by act of congress and to cause the same to be placed at the head of the grave of such serviceman or servicewoman, the expense of which shall not exceed the sum of $30 for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in 10-2-502 for the burial expenses.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R.C.M. 1921; re-en. Sec. 4539, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1963; amd. Sec. 4, Ch. 310, L. 1967; R.C.M. 1947, 71-123; amd. Sec. 1, Ch. 442, L. 1979.

10-2-505. No compensation for burial supervisor. The person appointed as provided in 10-2-501 shall not receive any compensation for any duties he may perform in compliance with this part.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R.C.M. 1921; re-en. Sec. 4540, R.C.M. 1935; R.C.M. 1947, 71-124.

10-2-506. Not to apply to nonresidents. This part shall not apply to servicemen and servicewomen who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. 4541, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1931; re-en. Sec. 4541, R.C.M. 1935; amd. Sec. 5, Ch. 310, L. 1967; R.C.M. 1947, 71-125.

Cross-References

Rules for determining residence, 1-1-215.

CHAPTER 3

DISASTER AND EMERGENCY SERVICES

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Chapter Cross-References

Department of Military Affairs created, 2-15-1201.

Division of Disaster and Emergency Services created, 2-15-1204.

Energy emergency laws to supplement civil defense laws, 90-4-317.

Part 1

General Provisions and Administration

10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;

(3) prepare for prompt and efficient search, rescue, recovery, care, and treatment of persons lost, entrapped, victimized, or threatened by emergencies or disasters;

(4) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(5) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(6) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(7) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(8) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(9) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use; and

(10) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R.C.M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974; amd. Sec. 2, Ch. 335, L. 1977; R.C.M. 1947, 77-2301.

Cross-References

Legislative findings and intent concerning energy emergency, 90-4-301.

10-3-102. Limitations. Nothing in parts 1 through 4 of this chapter may be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to

radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster;

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster and emergency plans shall place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter.

History: **En. 77-2301.2 by Sec. 3, Ch. 335, L. 1977; R.C.M. 1947, 77-2301.2.**

Cross-References

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the prevention of, the preparation for, and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to prevent, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department of military affairs.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize.

(7) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(8) "Principal executive officer" means the mayor, chairman of the county commissioners, or other chief executive officer of a political subdivision.

(9) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress of, preserving life of, or removing survivors from the site of a hazard, emergency,

or disaster to a place of safety in case of lost, stranded, entrapped, or injured persons.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R.C.M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974; amd. Sec. 4, Ch. 335, L. 1977; R.C.M. 1947, 77-2302; amd. Sec. 4, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: In (3), definition of disaster added "disruption of state services".

10-3-104. General authority of the governor. (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, he may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if he considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the declaration or which make possible termination of the state of emergency or disaster.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(1) thru (3).

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces, when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-305.

Governor's proclamation of emergency, 10-3-505.

Closure of hunting and fishing during fire emergency, 87-3-106.

Powers of Governor during energy emergency, 90-4-309 through 90-4-318.

Governor to appoint board members of Western Interstate Nuclear Compact, 90-5-202.

10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department of military affairs. The division shall have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department of military affairs through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program shall be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program due to limitations of funding, manpower, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of actual emergency or disaster, to insure the availability of adequately trained and equipped personnel in time of emergency or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with emergencies and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) have any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.

History: (1), (3), (4)En. Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R.C.M.

1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977; Sec. 77-2303, R.C.M. 1947; R.C.M. 1947, 77-2303, 77-2305.1(part); amd. Sec. 5, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: In (4), deleted: "(h) determine the requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of an emergency or disaster;

(i) plan for the procurement of food, clothing, other necessities, supplies, medicines, materials, and equipment that may be necessary in the event of an emergency or disaster and, as funding is authorized, procure and pre-position the same;".

Cross-References

Department of Military Affairs created, 2-15-1201.

Division created, 2-15-1204.

10-3-106. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the division of communications, department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the division of communications and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the state telecommunications system or network.

History: En. 77-2307.4 by Sec. 12, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.4.

Cross-References

State government communication systems, Title 2, ch. 17, part 3.

Cooperation with local government, 10-3-107, 10-3-202.

Cooperation with other agencies, 10-3-201.

10-3-107. National defense highway plans. The department of military affairs shall:

(1) cooperate with the agencies of this and other states and of the federal government which are connected with national defense in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense;

(2) coordinate the activities of the department of highways and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials;

(3) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans.

History: (1)En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974; Sec. 32-1702, R.C.M. 1947; (2)En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974; Sec. 32-1703, R.C.M. 1947; R.C.M. 1947, 32-1702, 32-1703; amd. Sec. 6, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: Renumbered former (a) as (1) and (b) as (2); at end deleted: "as referred to in subsection (1) of this section;

(c) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans;

(d) have the authority to take an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense.

(2) The department of military affairs may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense."; and inserted (3).

Cross-References

Highway traffic safety program, Title 61, ch. 2, part 1.

10-3-108 through 10-3-110 reserved.

10-3-111. Personnel immune from liability. (1) Neither the state nor any political subdivision of the state nor the agents or representatives of the state or any political subdivision thereof are liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker or member of any agency engaged in civilian defense activity during a disaster or catastrophe. This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workers' compensation law or any pension law or any act of congress.

(2) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity during a disaster or catastrophe, nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 of this chapter or any order or rule promulgated under the provisions of parts 1 through 4 of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, are liable for the death of or injury to persons or for damage to property as a result of any such activity.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R.C.M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974; rep. Sec. 15, Ch. 49, L. 1977; re-en. Sec. 2, Ch. 73, L. 1977; R.C.M. 1947, 77-2308.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney's fees for militia members, 10-1-601.

Limitations on liability for emergency care, 27-1-714.

Limitations on liability of health professionals for emergency care, 41-1-405.

10-3-112. Employment requirements for personnel — political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ...., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: **(1)En. Sec. 13, Ch. 218, L. 1951; Sec. 77-1313, R.C.M. 1947; amd. and redes. 77-2311 by Sec. 18, Ch. 94, L. 1974; amd. Sec. 15, Ch. 335, L. 1977; Sec. 77-2311, R.C.M. 1947; (2)En. Sec. 12, Ch. 218, L. 1951; Sec. 77-1312, R.C.M. 1947; amd. and redes. 77-2310 by Sec. 17, Ch. 94, L. 1974; amd. Sec. 14, Ch. 335, L. 1977; Sec. 77-2310, R.C.M. 1947; R.C.M. 1947, 77-2310, 77-2311.**

Cross-References

Oath of officers, 10-1-202.

Oath of enlistment, 10-1-302.

Discrimination by state, 49-2-308.

10-3-113. Identification — civil defense symbol. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

History: **En. 77-2315 by Sec. 19, Ch. 335, L. 1977; R.C.M. 1947, 77-2315.**

Cross-References

"Civil defense" defined, 10-3-103.

Part 2

Intergovernmental Cooperation

10-3-201. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of parts 1 through 4 of this chapter and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or securing emergency and disaster planning and services, identify the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

History: **En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(1) thru (4).**

10-3-202. Mutual aid — cooperation. (1) Political subdivisions shall be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with emergencies and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof and shall carry out arrangements of any such agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross, but nothing contained in parts 1 through 4 of this chapter lists or in any way affects the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

History: (1) thru (3)En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R.C.M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974; amd. Sec. 13, Ch. 49, L. 1977; amd. Sec. 10, Ch. 335, L. 1977; Sec. 77-2306, R.C.M. 1947; (4)En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; R.C.M. 1947, 77-2305.1(5), 77-2306.

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-203. Acceptance of services, gifts, grants, and loans. Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

History: En. Sec. 11, Ch. 218, L. 1951; Sec. 77-1311, R.C.M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974; amd. Sec. 13, Ch. 335, L. 1977; R.C.M. 1947, 77-2309.

Cross-References

Emergency powers of the Governor generally, 10-3-104.

10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate civil defense and disaster compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in 10-3-206.

(2) The governor may enter into the compact with any state that does not border this state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate civil defense and disaster compact.

(4) All interstate civil defense and disaster compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

History: En. 77-2307.3 by Sec. 11, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.3.

10-3-205. Authority to join interstate civil defense and disaster compact — supplemental agreements. (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate civil defense and disaster compact as developed by the civil defense office of the national security and resources board and the council of state governments.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate civil defense and disaster compact as set forth in 10-3-206.

History: (1)En. Sec. 2, Ch. 213, L. 1951; Sec. 77-1402, R.C.M. 1947; (2)En. Sec. 4, Ch. 213, L. 1951; Sec. 77-1404, R.C.M. 1947; R.C.M. 1947, 77-1402, 77-1404.

10-3-206. Text of compact. The interstate civil defense and disaster compact referred to in the preceding section, and which it is proposed to enter into by agreement, reads as follows:

INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

Article I

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster from enemy attack or other cause, natural or otherwise, including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective states including such resources as may be available from the United States government or any other source are essential to the safety, care, and welfare of the people thereof in the event of enemy action or other emergency, and any other resources including personnel, equipment, or supplies shall be incorporated into a plan or plans of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties hereto. The directors of civil defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article II

It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such civil defense plans and programs, the party states shall so far as possible provide and follow uniform standards, practices, and rules including:

(1) insignia, arm bands, and other distinctive articles to designate and distinguish the different civil defense services;

(2) blackouts and practice blackouts, air raid drill, mobilization of civil defense forces, and other tests and exercises;

(3) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

(4) the effective screening or extinguishing of all lights and lighting devices and appliances;

(5) shutting off water mains, electric power connections, and the suspension of all other utility services;

(6) all materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state;

(7) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;

(8) the safety of public meetings or gatherings; and

(9) mobile support units.

Article III

Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof, provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, privileges, and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

Article IV

Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered.

Article V

No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.

Article VI

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other states party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaisance, welfare, transportation, and communications personnel, equipment, and supplies.

Article VII

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

Article VIII

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid and for the cost incurred in connection with such requests; provided that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further that any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may relieve the party state receiving aid from any liability and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

Article IX

Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed by the party state of which the evacuees are residents or by the United States government under plans approved by it. After the termination of the emergency or disaster the party state of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article X

This compact shall be available to any state, territory, or possession of the United States and the District of Columbia. The term "state" may also include any neighboring foreign country or province or state thereof.

Article XI

The committee established pursuant to Article I of this compact may request the civil defense agency of the United States government to act as an informational and coordinating body under this compact.

Article XII

This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the civil defense agency and other appropriate agencies of the United States government.

Article XIII

This compact shall continue in force and remain binding on each party state until the legislature or the governor of such party state takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

Article XIV

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: **En. Sec. 3, Ch. 213, L. 1951; R.C.M. 1947, 77-1403.**

Part 3

State Planning and Execution

10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an emergency or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of manpower and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

History: **En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part); amd. Sec. 7, Ch. 430, L. 1983.**

Compiler's Comments

1983 Amendment: In (2), substituted "the division may seek the advice" for "the division shall seek the advice"; and substituted "the division may encourage" for "the division shall encourage".

Cross-References

Energy supply emergencies — energy curtailment required, 90-4-307.

10-3-302. Declaration of emergency — effect and termination. (1) A state of emergency may be declared by the governor when he determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall be determined by a declaration of an emergency by the president of the United

States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(4).

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

Emergency powers of the Governor generally, 10-3-104.

Power of Governor to declare energy emergency, 90-4-310.

10-3-303. Declaration of disaster — effect and termination. (1) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(5), (6).

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

10-3-304. Dissemination. An executive order or proclamation issued under this part shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(7).

10-3-305. Governor commander-in-chief — duties. (1) During a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for emergency or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(2) The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of parts 1 through 4 of this chapter.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(8), (9).

Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Emergency powers of the Governor generally, 10-3-104.

10-3-306 through 10-3-310 reserved.

10-3-311. Emergency or disaster expenditures. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) The governor is charged with the implementation of the program.

(3) The administration and development of rules for implementation of this section must be promulgated by the department of administration.

History: (1)En. Sec. 1, Ch. 409, L. 1971; amd. Sec. 19, Ch. 577, L. 1977; Sec. 79-2501, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 409, L. 1971; Sec. 79-2503, R.C.M. 1947; R.C.M. 1947, 79-2501, 79-2503; amd. Sec. 1, Ch. 216, L. 1981; amd. Sec. 8, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: In middle of first paragraph of (1), substituted "to meet contingencies and needs ... results in damage to the works, buildings" for "to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, or other acts of God resulting in damage or disaster to the works, buildings".

1981 Amendment: Inserted "in the affected fund" in (1)(b).

Cross-References

Adoption and levy of emergency budget by Board of County Commissioners, 7-6-2341 through 7-6-2345.

Adoption and levy of emergency budget by City Council or Commission, 7-6-4251 through 7-6-4255.

Authorization to transfer county funds for emergency relief, 7-31-2101.

Levying of emergency taxes by city and county, 10-3-405.

Adoption and levy of emergency budget by school district trustees, 20-9-161 through 20-9-167.

Energy emergency expenditures authorized, 90-4-318.

10-3-312. Maximum expenditure in biennium. Whenever an emergency or disaster is declared by the governor, he is authorized to expend from the general fund not to exceed $1 million in any one biennium.

History: En. Sec. 2, Ch. 409, L. 1971; R.C.M. 1947, 79-2502; amd. Sec. 1, Ch. 626, L. 1983.

Compiler's Comments

1983 Amendment: Increased maximum authorized expenditure from $750,000 to $1 million.

10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make such units available to any political subdivision of the state;

(b) to assist any political subdivision of this state which is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or transportation (within or across the state) laws or regulations within this state when by proclamation he declares such suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(3) Nothing contained in parts 1 through 4 of this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

History: En. 77-2312 by Sec. 16, Ch. 335, L. 1977; R.C.M. 1947, 77-2312.

10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan and to receive and disburse the proceeds of any approved loan to any applicant political subdivision;

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character.

History: **En. 77-2313 by Sec. 17, Ch. 335, L. 1977; R.C.M. 1947, 77-2313.**

10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

History: **En. 77-2314 by Sec. 18, Ch. 335, L. 1977; R.C.M. 1947, 77-2314.**

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney's fees for militia members, 10-1-601.

Part 4

Local and Interjurisdictional Planning and Execution

10-3-401. Local and interjurisdictional disaster and emergency plan — distribution. (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, if any, and officials; and

(b) the disaster and emergency chain of command.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(5), (6); amd. Sec. 9, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (1), substituted "Each political subdivision eligible to receive funds under this chapter shall prepare a local" for "Each local and interjurisdictional agency shall prepare and keep current a local"; near end of (1) substituted "political subdivision" for "agency"; at beginning of (2) substituted "The political subdivision" for "The local or interjurisdictional agency"; and in (2)(a) inserted "if any" after "the emergency responsibilities of all local agencies".

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Mutual aid and cooperation, 10-3-202.

State disaster and emergency plan, 10-3-301.

10-3-402. Local emergency — declaration and termination. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(3) An emergency proclamation may not continue for longer than 10 days except by consent of the governing body of the political subdivision.

(4) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(1), (2).

Cross-References

Adoption of emergency resolution by County Commissioners, 7-6-2341, 7-6-2342.

Adoption of emergency resolution by City Council or Commission, 7-6-4251, 7-6-4252.

Adoption of emergency resolution by school district trustees, 20-9-163.

10-3-403. Local disaster — declaration and termination. (1) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(2) A disaster declaration may not continue for longer than 30 days except by consent of the governing body of the political subdivision.

(3) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

History: **En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(3).**

10-3-404. Contents of order — effect. (1) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, and the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such order or resolution shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division and the agency charged with recording the official records of the political subdivision.

(2) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

History: **En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(4), (5); amd. Sec. 10, Ch. 430, L. 1983.**

Compiler's Comments

1983 Amendment: Near end of (1), deleted ", the local or interjurisdictional agency," after "and shall be filed promptly with the division".

10-3-405. Levying emergency tax — disposition of surplus. (1) The governing body of the city or town or the governing body of the county, or both, shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the governing body of the city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies.

History: **(1) thru (4)En. Sec. 5, Ch. 97, L. 1967; Sec. 11-4305, R.C.M. 1947; (5)En. Sec. 6, Ch. 97, L. 1967; Sec. 11-4306, R.C.M. 1947; R.C.M. 1947, 11-4305(1) thru (4), 11-4306; amd. Sec. 2, Ch. 216, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "governing body of the" throughout (1) for specific references to "city council" and "board of county commissioners"; and made minor changes in phraseology.

Cross-References

Procedure to make emergency expenditures by Board of County Commissioners, 7-6-2341 through 7-6-2345.

Procedure to make emergency expenditures by City Commission or Council, 7-6-4251 through 7-6-4255.

Authority of County Commissioners to transfer funds for emergency relief, 7-31-2101.

Emergency or disaster expenditures authorized by Governor, 10-3-311.

Procedure to make emergency expenditures by school district trustees, 20-9-161 through 20-9-167.

Part 5

Emergency Resource Management

10-3-501. Policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an attack. Therefore, it is hereby found and declared to be necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is further declared to be the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R.C.M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974; R.C.M. 1947, 77-2401.

10-3-502. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Emergency resources management plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids or other forms of warfare upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon him, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R.C.M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974; R.C.M. 1947, 77-2403.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-503.

Governor's proclamation of emergency, 10-3-505.

10-3-504. Emergency resource management plan. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-505. Proclamation of emergency — effect and termination. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the postattack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take such other action as may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority thereof shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress, however, the proclamation shall terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R.C.M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974; amd. Sec. 14, Ch. 49, L. 1977; R.C.M. 1947, 77-2404.

Cross-References

Declaration of emergency, 10-3-302.

Declaration of disaster, 10-3-303.

Debris and wreckage removal in emergencies or disasters, 10-3-315.

Part inoperative upon convening of Legislature, 10-3-609.

10-3-506. Judicial inquiry of proclamation. Every proclamation and the facts related in the proclamation issued under this part are subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R.C.M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974; R.C.M. 1947, 77-2405.

Cross-References

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.

Original jurisdiction of Supreme Court, 3-2-202.

10-3-507. Penalty for violation of rules. A person violating any of the rules or orders adopted and promulgated under 10-3-505 shall upon conviction be subject to a fine not to exceed $10,000 or to a term of imprisonment not to exceed 5 years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R.C.M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974; R.C.M. 1947, 77-2406.

Part 6

Continuity of Government

Part Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

10-3-601. Citation of part. This part may be cited as "The Continuity in Government Act".

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973; R.C.M. 1947, 82-3801; amd. Sec. 11, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: Deleted "Post-Enemy Attack" before "Continuity in Government Act".

10-3-602. Filling vacancy in governorship. Following an enemy attack, the line of succession to the office of governor shall be extended as provided in Title 2, chapter 16, part 5.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973; R.C.M. 1947, 82-3802; amd. Sec. 6, Ch. 142, L. 1979.

Cross-References

Officers of the Senate and House of Representatives, 5-2-221.

10-3-603. Filling vacancy in boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack, if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment. Provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973; R.C.M. 1947, 82-3803.

Cross-References

Filling vacancies created by other causes, 7-4-2106.

10-3-604. Filling vacancy in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967; R.C.M. 1947, 82-3804.

Cross-References

Filling vacancies created by other causes, 7-4-4112.

10-3-605. Filling vacancy for city or town executive. In the event that the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967; R.C.M. 1947, 82-3805.

Cross-References

Filling of vacancy created by other causes, 7-4-4112.

10-3-606. Quorum requirement. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute, then those legislators or members of the council, board, or commission available for duty shall constitute the legislature, board, or commission and quorum requirements shall be suspended. Where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967; R.C.M. 1947, 82-3806.

Cross-References

Quorum of Legislature, Art. V, sec. 10, Mont. Const.

Quorum of City or Town Council, 7-5-4121.

Quorum of school district trustees, 20-3-322.

10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967; R.C.M. 1947, 82-3807; amd. Sec. 12, Ch. 430, L. 1983.

Compiler's Comments

1983 Amendment: At beginning, deleted "Following an enemy attack in which" and inserted "If"; near beginning substituted "is rendered unsuitable" for "has been rendered unsuitable".

Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

Change of venue of District Court in emergency, 3-5-405.

Proclamation of emergency — effect and termination, 10-3-505.

10-3-608. Relocating seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as it deems most suitable.

History: **En. Sec. 8, Ch. 268, L. 1967; R.C.M. 1947, 82-3808.**

Cross-References

Change of venue of District Court in emergency, 3-5-405.

Proclamation of emergency — effect and termination, 10-3-505.

10-3-609. Part inoperative upon convening of legislature. The provisions of this part shall become inoperative at the time of the convening of the first legislature following the emergency which originally made such provisions operative.

History: **En. Sec. 9, Ch. 268, L. 1967; R.C.M. 1947, 82-3809.**

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

TITLES 11 AND 12

RESERVED

TITLE 13

ELECTIONS

Ch.
1. General Provisions.
2. Registration of Electors.
3. Election Precincts.
4. Election Judges.
Chapters 5 through 9 reserved.
10. Primary Elections and Nominations.
11. Election Proclamation. Repealed. Sec. 407, Ch. 571, L. 1979.
12. Election Supplies and Ballots.
13. Election Procedure.
14. Nonpartisan Elections.
15. Canvassing, Returns, and Certificates.
16. Recounts and Tie Votes.
17. Voting Machines.
18. Electronic Voting Systems. Repealed. Sec. 407, Ch. 571, L. 1979.
Chapters 19 through 24 reserved.
25. Elections for Federal Office.
26. Convention to Ratify Amendments to United States Constitution.
27. Ballot Issues.
Chapters 28 through 34 reserved.
35. Election and Campaign Practices and Criminal Provisions.
36. Contests.
37. Control of Campaign Practices.
38. Political Parties.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — General Provisions

Section
13-1-101. Definitions.
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Part 2 — Role of Secretary of State

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13-1-203. Chief election officer to advise, assist, and train.
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Part 3 — Local Election Administration

13-1-301. Election administrator.
13-1-302. Election costs.
13-1-303. Disposition of ballots and other election materials.
13-1-304. Duties of officials when election not held.

Part 4 — Political Subdivision Elections

13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections.

Chapter Cross-References

Right of suffrage, Art. II, sec. 13, Mont. Const.

Right of initiative and referendum, Art. III, sec. 4 through 6, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Election of executive officers, Art. VI, sec. 2, Mont. Const.

Vacancy in executive branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.

Election of judicial officers, Art. VII, sec. 8, Mont. Const.

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.

Constitutional revision by initiative and referendum, Art. XIV, sec. 8, 9, Mont. Const.

Montana Recall Act, Title 2, ch. 16, part 6.

Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.

Vacancy in House or Senate, Title 5, ch. 2, part 4.

Election on question of organization of municipality, 7-2-4104.

Election on question of city-county consolidation, 7-3-1271.

Election on question of abandonment of commission-manager government, 7-3-4334.

Election on question of adoption of commission-manager government, 7-3-4341.

Vacancy in county office, 7-4-2106, 7-4-2206.

Election authorizing county to exceed maximum mill levy, 7-6-2535.

Election authorizing municipality to exceed maximum mill levy, 7-6-4436.

Challenges to local government bond elections, 7-7-105.

Election on question of creating county water and sewer district, 7-13-2211.

Procedure for election of trustees of hospital district, 7-34-2117.

Vacancy in office of County Superintendent of Schools, 20-3-202.

Election of board of trustees of school district, 20-3-304, 20-3-306.

Vacancy in office of School District Trustee, 20-3-309.

Vacancy in office of Community College District Trustee, 20-15-223.

Conduct of school elections, 20-20-102.

Election of supervisor of conservation districts, 76-15-303.

Vacancy in office of Conservation District Supervisor, 76-15-312.

Conduct of irrigation district elections, 85-7-1710.

Irrigation district special election, 85-7-1712.

Election to create conservancy district, 85-9-206.

Conduct of conservancy district elections after organization, 85-9-422.

Part 1

General Provisions

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has publicly announced his intention to seek nomination or election to public office by write-in vote and who has received a contribution or made an expenditure or has given an authorization to another person to receive a contribution or make an expenditure for the purpose of supporting his nomination or election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for his filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for himself and his family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee.

(8) "General election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1).

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for such nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector.

History: **Ap. p. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977; Sec. 23-2601, R.C.M. 1947; Ap. p. Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977; Sec. 23-4777, R.C.M. 1947; R.C.M. 1947, 23-2601, 23-4777; amd. Sec. 1, Ch. 571, L. 1979; amd. Sec. 1, Ch. 603, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted second sentence of (8).

Cross-References

Elections on initiatives and referenda, Art. III, sec. 6, Mont. Const.

Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Electors eligible to vote in election for fire district board of trustees, 7-33-2106.

Definition of "qualified elector" for conservation district elections, 76-15-103(9).

Elector requirement in election to create conservation district project area, 76-15-606.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

History: **En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973; R.C.M. 1947, 23-2602.**

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Secrecy required when aiding disabled elector, 13-13-119.

Voting machines to allow elector to vote in secrecy, 13-17-103.

Criminal provisions relating to secrecy, 13-35-201.

13-1-103. Determination of winner. The individual receiving the highest number of votes for any office at an election is elected or nominated to that office.

History: **En. Sec. 3, Ch. 368, L. 1969; R.C.M. 1947, 23-2603; amd. Sec. 2, Ch. 571, L. 1979.**

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by the Governor, 2-15-401.

13-1-104. Times for holding general elections. (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision required to hold elections annually shall be held on school election day, the first Tuesday of

April of each year, and is subject to the election procedures provided for in 13-1-401.

History: En. Sec. 4, Ch. 368, L. 1969; R.C.M. 1947, 23-2604; amd. Sec. 4, Ch. 571, L. 1979; amd. Sec. 5, Ch. 27, L. 1981; amd. Sec. 2, Ch. 603, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "November" inserted language relating to elections on ballot issues through "pursuant to Article III, section 6, and".

1981 Amendment: Inserted "and not required to hold annual elections" in (2); substituted "on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401" for "with the general election provided for in subsections (1) and (2). If a primary election is necessary, it shall be held at the same time as the primary provided for the regular general election for that year" in (3).

Cross-References

Elections on initiatives and referenda, Art. III, sec. 6, Mont. Const.

Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

General election day legal holiday, 1-1-216.

Time for election of directors of county water and sewer districts, 7-13-2236.

Time for election of trustees of fire district, 7-33-2106.

Election day school holiday under certain circumstances, 20-1-305.

Election day as bank holiday, 32-1-481.

Time for election of commissioners of irrigation districts, 85-7-1702.

Time for election of commissioners of drainage districts, 85-8-302.

13-1-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 56, Ch. 368, L. 1969; R.C.M. 1947, 23-3301.

13-1-106. Time of opening and closing of polls for all elections. Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than 200 registered electors, which must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately.

History: En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977; R.C.M. 1947, 23-2605; amd. Sec. 5, Ch. 571, L. 1979; amd. Sec. 1, Ch. 676, L. 1983.

Compiler's Comments

1983 Amendment: Changed opening time from 8 a.m. to 7 a.m. and changed excepted polling places from those with less than 100 registered electors to those with less than 200 registered electors.

13-1-107. Times for holding primary elections. (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

History: En. Sec. 3, Ch. 571, L. 1979.

Cross-References

Presidential preference primary to be held in conjunction with state primary, 13-10-401.

13-1-108. Notice of special elections. Notice of any special election shall be published at least once a week for the 3 successive weeks before the election on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held.

History: En. Sec. 6, Ch. 571, L. 1979.

Cross-References

Notice of recall election, 2-16-622, 2-16-631.

Notice of election on question of creating new county, 7-2-2215.

Notice of election on question of organization of new municipality, 7-2-4105.

Notice of election on question of annexation by petition, 7-2-4603.

Notice of election on question of disincorporation of municipality, 7-2-4903.

Notice of election on question of city-county consolidation, 7-3-1204.

Notice of election to elect members of commission of city-county government, 7-3-1208.

Notice of election on question of granting municipal franchise, 7-5-4322.

Notice of election on question of additional mill levy, 7-6-4434.

Notice of election on question of issuance of county bonds, 7-7-2229.

Notice of election on question of issuance of municipal bonds, 7-7-4227.

Notice of election on question of creation of county water and sewer district, 7-13-2210.

Notice of election on question of incurring indebtedness for county water and sewer district, 7-13-2324.

Notice of irrigation district special election, 85-7-1712.

13-1-109. Election records open to public. Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

History: En. Sec. 15, Ch. 571, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

13-1-110 reserved.

13-1-111. Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law.

(b) He must be 18 years of age or older.

(c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least 30 days.

(d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973; R.C.M. 1947, 23-2701.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Rules for determining residence generally, 1-1-215.

Electors as part of the political body, 1-1-401.

State residency not required to vote on question of creation of county water/sewer district, 7-13-2212.

Registration generally, Title 13, ch. 2.

Challenges of voter qualifications prior to election, 13-2-404.

Change of residence to another county within 45 days of election, 13-2-514.

Qualification of elector in school elections, 20-20-301.

Definition of "felony", 45-2-101(21).

Right to hold elected office, 49-1-202.

Rights and duties of nonelector, 49-1-203.

Developmentally disabled individuals, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-1-112. Rules for determining residence. For registration or voting, the residence of any individual shall be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any public prison; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose his residence if he goes into another state or other district of this state for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If an individual moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where his family resides with the intention of remaining is a resident of the place where he resides.

(8) A change of residence can be made only by the act of removal joined with intent to remain in another place.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 7, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

Rules for determining residence generally, 1-1-215.

13-1-113. Only one residence. There can be only one residence.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 8, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-114. Computation of elector's age and term of residence. An elector's age and the term of his residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(10); amd. Sec. 9, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-115. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places, except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969; R.C.M. 1947, 23-2705.

Cross-References

Privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

13-1-116 through 13-1-120 reserved.

13-1-121. Question of holding constitutional convention. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973; R.C.M. 1947, 23-4801.

Cross-References

Convention by call of Legislature, Art. XIV, sec. 1, Mont. Const.

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Call of convention, Art. XIV, sec. 4, Mont. Const.

Initiative for call of convention, Title 13, ch. 27.

13-1-122. Ballot form and content. The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution requires the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR calling a constitutional convention

☐ AGAINST calling a constitutional convention

History: En. Sec. 2, Ch. 36, L. 1973; R.C.M. 1947, 23-4802; amd. Sec. 10, Ch. 571, L. 1979.

Cross-References

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Part 2

Role of Secretary of State

13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

History: En. Sec. 11, Ch. 571, L. 1979.

13-1-202. Forms and rules prescribed by chief election officer. (1) In carrying out his responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapters 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. He must seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

History: En. Sec. 12, Ch. 571, L. 1979.

13-1-203. Chief election officer to advise, assist, and train. The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. He shall hold at least one workshop each year to provide training and assistance to election administrators. Election administrators shall be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses for county officials as provided for in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, such workshops may be held in several sessions at separate locations in the state.

History: En. Sec. 13, Ch. 571, L. 1979.

13-1-204. Election records to be kept by secretary of state. (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the latest general election;

(e) a count of votes cast at the latest general election by precinct and by legislative, judicial, and multicounty districts.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections shall be open for public inspection during normal office hours.

History: En. Sec. 18, Ch. 571, L. 1979; amd. Sec. 1, Ch. 70, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(e), after "by precinct" deleted "; by municipality;".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Election records open to public, 13-1-109.

Part 3

Local Election Administration

13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of such political subdivision, as provided by 13-1-401.

History: **En. Sec. 14, Ch. 571, L. 1979; amd. Sec. 6, Ch. 27, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (3).

Cross-References

Duties of County Clerk, 7-4-2611.

Definition of County Election Administrator, 13-1-101(5).

Request for County Election Administrator to conduct school election, 20-20-417.

13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

History: **En. Sec. 16, Ch. 571, L. 1979; amd. Sec. 7, Ch. 27, L. 1981; amd. Sec. 1, Ch. 558, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted (1) for "(1) Unless specifically provided otherwise, all costs of the primary and general elections regularly scheduled for even-numbered years shall be paid by the counties.

(2) Costs of the primary and general elections regularly scheduled for odd-numbered years shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body." requiring other political subdivisions to share costs of even-numbered-year elections; and inserted (7).

1981 Amendment: Inserted "school" as 12th word; substituted "election administrator and the school district election administrator" for "governing body" in (3) (now (2)).

Cross-References

Expenses of Election Administrator, 13-2-117.

Expenses of recount in close election, 13-16-205.

Expenses of court-ordered recount, 13-16-307.

13-1-303. Disposition of ballots and other election materials. (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election shall be kept in the unopened packages received from the election judges for a period of 12 months. Such packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may destroy the ballots without opening the packages.

(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of such a plan, records may be destroyed as provided in the plan.

History: En. Sec. 17, Ch. 571, L. 1979.

Cross-References

Recount procedures, Title 13, ch. 16.

13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

History: En. Sec. 25, Ch. 571, L. 1979.

Cross-References

Registration lists not required when election not to be held, 13-2-115.

Precinct register not required when election not held, 13-2-116.

When primary election unnecessary, 13-10-209.

When nonpartisan primary election unnecessary, 13-14-115.

Part 4

Political Subdivision Elections

13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections. (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1) or (2) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper

of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

History: **En. Sec. 8, Ch. 27, L. 1981.**

Compiler's Comments

Code Commissioner Correction: Code Commissioner 1981 inserted the first "administrator" following "election" in (2) to clarify.

CHAPTER 2

REGISTRATION OF ELECTORS

Part 1 — Registrars

Section

13-2-101. Repealed.
13-2-102. Deputy registrars.
13-2-103 through 13-2-110 reserved.
13-2-111. Repealed.
13-2-112. Register of electors to be kept.
13-2-113. Repealed.
13-2-114. Registration numbers to be assigned.
13-2-115. Registration lists to be prepared.
13-2-116. Precinct register.
13-2-117. County governing body to provide election administrator with sufficient help.
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13-2-121. Repealed.
13-2-122. Charges for registers, elector lists, and mailing labels made available to public.

Part 2 — Registration Procedures

13-2-201. Hours of registration.
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13-2-211. Elector in the United States service defined.
13-2-212. Registration of electors in the United States service.
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13-2-214. Classification of federal post card application.
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Part 3 — Close of Registration

13-2-301. Close of registration — procedure.
13-2-302. Registration immediately before an election.
13-2-303. Repealed.

Part 4 — Cancellation and Challenge of Registration

13-2-401. Cancellation of registration for failure to vote — reregistration.
13-2-402. Other reasons for cancellation.
13-2-403. Challenge of registration.
13-2-404. Challenges prior to election.

Part 5 — Transfer of Registration

13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.
13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.
13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.
13-2-504 through 13-2-510 reserved.
13-2-511. Transferring registration or changing name.
13-2-512. Right to vote when precinct or name changed.
13-2-513. Procedure for transferring registration.
13-2-514. Change of residence to another county.
13-2-515. Inquiry as to previous registration — notices of changes.

Part 6 — Effect of Registration

13-2-601. Name on precinct register prima facie evidence of right to vote.
13-2-602. Joinder of parties in proceedings to compel entry of name in register.
13-2-603. Erroneous omission of name from precinct register.

Chapter Cross-References

Right of suffrage, Art. II, sec. 13, Mont. Const.

Legislature to provide for election registration, Art. IV, sec. 3, Mont. Const.

Definitions applicable to this chapter, 13-1-101.

Criminal acts relating to registration, Title 13, ch. 35.

Part 1

Registrars

13-2-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(1), (2).**

13-2-102. Deputy registrars. (1) A notary public who fulfills the requirements of subsection (4) may be a deputy registrar in the county in which he resides.

(2) (a) The governing body of each county may at its discretion appoint two or more deputy registrars for each precinct in the county before March 15 of each even-numbered year.

(b) The number of deputy registrars, if appointed, shall be equally divided between the political parties meeting the requirements of 13-10-601 unless one or more of the parties fail to submit the list required in subsection (3) or submit an incomplete list. A political party which qualifies under 13-10-501 may request the appointment of deputy registrars and shall submit a list for such appointments within 30 days of such qualification.

(c) An appointed deputy registrar must be a resident elector in the precinct for which appointed but may register electors in all precincts in the county.

(3) Deputy registrars shall be appointed from lists of individuals recommended by the qualified political parties, submitted by February 1 of even-numbered years. If no lists are submitted by political parties, the governing body may appoint two deputy registrars for each precinct without party recommendations.

(4) Each election administrator shall provide training to all deputy registrars in registration procedures and shall issue a certificate to each deputy

registrar on successful completion of the training. A deputy registrar may not register voters without a current certificate. All certificates expire on March 15 of each even-numbered year.

(5) Deputy registrars shall forward all completed cards to the county registrar within 3 days. Registration cards properly executed before a deputy registrar prior to the close of registration shall be accepted for 3 days after the close of registration.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973; amd. Sec. 1, Ch. 205, L. 1975; amd. Sec. 9, Ch. 365, L. 1977; R.C.M. 1947, 23-3003; amd. Sec. 19, Ch. 571, L. 1979; amd. Sec. 1, Ch. 146, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(a), substituted "may at its discretion appoint two or more" for "shall appoint at least two"; and near beginning of (2)(b), substituted "deputy registrars, if appointed" for "appointed deputy registrars".

13-2-103 through 13-2-110 reserved.

13-2-111. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(3).

13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner he considers most efficient. The original signed registration form for each elector shall be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms shall be prescribed by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969; R.C.M. 1947, 23-3004; amd. Sec. 20, Ch. 571, L. 1979.

13-2-113. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 243, L. 1971; R.C.M. 1947, 23-3004.1.

13-2-114. Registration numbers to be assigned. (1) The registration form for each elector shall be assigned a number by the election administrator, using a system of numbering that best accommodates the filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be printed on lists of registered voters or released as public information.

(2) If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers shall be developed in consultation with the secretary of state.

(3) Upon receipt by the election administrator of a properly completed registration card, the registration of the elector is complete and the election administrator shall assign a registration number.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(part); amd. Sec. 21, Ch. 571, L. 1979; amd. Sec. 1, Ch. 284, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

13-2-115. Registration lists to be prepared. (1) Immediately after registration is closed, the election administrator shall prepare and have printed lists of all registered electors in each precinct. Names of electors shall be listed alphabetically, with their residence address or mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters shall be displayed at the polling place. Extra copies of the lists shall be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

History: Ap. p. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973; Sec. 23-3012, R.C.M. 1947; Ap. p. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973; Sec. 23-3023, R.C.M. 1947; R.C.M. 1947, 23-3012(part), 23-3023; amd. Sec. 22, Ch. 571, L. 1979.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

Registered elector competent to act as juror, 3-15-301.

Jury list selected from registered elector list, 3-15-402.

Close of registration, 13-2-301.

13-2-116. Precinct register. (1) Before each election, the election administrator shall prepare a precinct register for each precinct for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of the registered electors, a space for the signature of the elector, and such other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

History: (1) thru (3)En. Sec. 43, Ch. 368, L. 1969; R.C.M. 1947, 23-3024; amd. Sec. 23, Ch. 571, L. 1979; (4)En. Sec. 25, Ch. 571, L. 1979.

13-2-117. County governing body to provide election administrator with sufficient help. The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977; R.C.M. 1947, 23-3026; amd. Sec. 24, Ch. 571, L. 1979.

Cross-References

Costs of elections generally, 13-1-302.

13-2-118 through 13-2-120 reserved.

13-2-121. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971; R.C.M. 1947, 23-3027.

13-2-122. Charges for registers, elector lists, and mailing labels made available to public. Upon written request, the registrar shall furnish to any elector for noncommercial use a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

History: En. Sec. 47, Ch. 368, L. 1969; R.C.M. 1947, 23-3028; amd. Sec. 1, Ch. 66, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of first sentence, substituted "to any elector for noncommercial use" for "any person"; at end of first sentence, inserted "a current list of registered electors, or mailing labels for registered electors"; near beginning of second sentence, changed "shall" to "may"; and at end of second sentence substituted "not to exceed the actual cost of the register, list, or mailing labels" for "of 5 cents for each name entered in the official register".

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

Part 2

Registration Procedures

13-2-201. Hours of registration. The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(1); amd. Sec. 26, Ch. 571, L. 1979.

13-2-202. Registration by personal appearance. An elector may register by appearing before the registrar or a deputy registrar in the county in which he resides and:

(1) answering any questions asked by the official concerning items of information called for in the registration form;

(2) signing and verifying or affirming the affidavit or affidavits on the form.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(1); amd. Sec. 27, Ch. 571, L. 1979.

13-2-203. Registration by mail. (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which he resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form shall be designed as prescribed by the secretary of state.

(3) The elector shall complete, sign, and either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed by the witness or officer before whom signed.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(2) thru (6); amd. Sec. 28, Ch. 571, L. 1979.

Cross-References

Officers who may administer oaths, 1-6-101.

13-2-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 26, Ch. 368, L. 1969; R.C.M. 1947, 23-3007.

13-2-205. Procedure when prospective elector not qualified at time of registration. An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may register if it appears that he will become qualified to vote by election day.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(1); amd. Sec. 29, Ch. 571, L. 1979.

Cross-References

Qualifications of voter, 13-1-111.

U.S. citizenship required, 13-2-206.

13-2-206. Citizenship requirements. A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(2).

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-207. Notice of registration. (1) The election administrator shall give or mail to each elector a notice, affirming registration and giving the location of the elector's polling place. Mailed notices must have printed on the address side the words "Do Not Forward, Return Postage Guaranteed".

(2) The election administrator must investigate the reason for the return of any mailed notices and correct the address on the registration form and mail a new notice or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form.

History: En. Sec. 30, Ch. 571, L. 1979.

13-2-208 through 13-2-210 reserved.

13-2-211. Elector in the United States service defined. "Elector in the United States service" means:

(1) a member of the armed forces in the active service and his spouse and dependents;

(2) a member of the merchant marine of the United States and his spouse and dependents;

(3) a member of a religious group or welfare agency assisting members of the armed forces of the United States, who is officially attached to and serving the armed forces, and his spouse and dependents;

(4) a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969; amd. Sec. 1, Ch. 249, L. 1971; R.C.M. 1947, 23-3718.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-212. Registration of electors in the United States service. (1) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by mailing to the election administrator:

(a) the registration form, filled out and signed under oath; or

(b) the federal post card application, filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

History: (1)En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; Sec. 23-3006, R.C.M. 1947; (2)En. Sec. 137, Ch. 368, L. 1969; Sec. 23-3719, R.C.M. 1947; R.C.M. 1947, 23-3006(7), 23-3719(2); amd. Sec. 31, Ch. 571, L. 1979.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-213. Oath for elector in United States service. (1) Any oath required for electors in the United States service may be administered and attested, within or without the United States, by any commissioned officer in active service, any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, the head of any department or agency of the United States, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States.

(2) No official seal is required to be affixed to the oath. Neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971; R.C.M. 1947, 23-3720; amd. Sec. 32, Ch. 571, L. 1979.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-214. Classification of federal post card application. (1) Upon receipt by the election administrator of a federal post card application, properly filled out and signed under oath, the election administrator shall classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct.

(2) The election administrator shall, upon receipt of any federal post card application, immediately enter all information in the registration records of the office and either file the post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered.

(3) The election administrator shall send to the applicant by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within 75 days preceding the election another federal post card application to the election administrator.

(4) A federal post card application received from an elector in the United States service within 75 days preceding an election shall be treated as a simultaneous application for registration and for ballot. Where the elector is already registered, the federal post card application shall be treated as an application for a ballot. The election administrator may use photocopies of the post card application to complete all necessary records.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971; R.C.M. 1947, 23-3721; amd. Sec. 33, Ch. 571, L. 1979.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-215. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when and place where registration is required shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to noon on the day before the election. Said elector shall execute a sworn affidavit qualifying him under this section to be filed in the office of his registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which he is entitled to vote. This certificate shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971; R.C.M. 1947, 23-3724.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

Part 3

Close of Registration

13-2-301. Close of registration — procedure. (1) The election administrator shall:

(a) close registrations for 30 days before any election; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice shall be prescribed by the secretary of state.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971; R.C.M. 1947, 23-3016; amd. Sec. 34, Ch. 571, L. 1979.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

Filing of nominating petitions for supervisor of conservation district, 76-15-302.

13-2-302. Registration immediately before an election. An individual may register during the time when registration is closed preceding any election, and the election administrator shall keep his registration form in a separate file until it can be properly entered after the election.

History: En. Sec. 36, Ch. 368, L. 1969; R.C.M. 1947, 23-3017; amd. Sec. 35, Ch. 571, L. 1979.

13-2-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 368, L. 1969; amd. Sec. 25, Ch. 342, L. 1977; amd. Sec. 5, Ch. 365, L. 1977; R.C.M. 1947, 23-2704.

Part 4

Cancellation and Challenge of Registration

13-2-401. Cancellation of registration for failure to vote — reregistration. (1) Except as provided in subsection (3), within 60 days after every general election in which a president is elected, the election administrator shall:

(a) cancel the registration of the electors who have not voted in each precinct, as shown by the official pollbook and precinct register of each precinct;

(b) mark the form of each elector whose registration has been canceled; and

(c) place canceled forms for the entire county in alphabetical order in the canceled file.

(2) An elector whose registration is canceled may reregister in the same manner as if he were registering for the first time.

(3) The registration of an elector who votes by absentee ballot but whose ballot does not arrive in time to be counted may not be canceled if his ballot is received and rejected by the election administrator within 10 days succeeding the election.

(4) When the election administrator has completed cancellation of the electors' registration as provided in this section, a notice of cancellation shall be published on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county once a week for 2 weeks. The notice shall be run in a display advertisement (known as ROP in the trade) if in a newspaper or as an announcement if on radio or television and shall be in a form prescribed by the secretary of state. The names of those electors whose registration has been canceled need not be published.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973; amd. Sec. 1, Ch. 369, L. 1977; R.C.M. 1947, 23-3013; amd. Sec. 36, Ch. 571, L. 1979.

13-2-402. Other reasons for cancellation. The election administrator shall cancel the registration of any elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if an elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state.

History: **En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(1); amd. Sec. 37, Ch. 571, L. 1979; amd. Sec. 48, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: In (6), substituted "upon determination of an election judge" for "as provided in 13-13-308".

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-403. Challenge of registration. (1) Forty-five or more days before the close of registration for an election, three registered electors of a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which he is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator must send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be canceled within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that he resides at the address given on his registration form.

(3) The election administrator must cancel the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears he resides at the address given on his registration form after his registration has been canceled as provided in this section, he may reregister by completing a new registration form. Such registration shall be effective for the next election even though the registration for that election is closed.

History: **En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(2); amd. Sec. 38, Ch. 571, L. 1979.**

Cross-References

Challenges on election day, 13-13-301.

13-2-404. Challenges prior to election. (1) If an elector believes another elector fails to meet the qualifications required in 13-1-111, he may challenge the right of that elector to vote any time not later than 20 days prior to an election. The challenge must:

(a) be filed with the election administrator and be signed by the elector;

(b) be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) state the grounds of the challenge, objection, and disqualification.

(2) The election administrator shall:

(a) file the affidavit of challenge in his office;

(b) deliver a correct copy of the affidavit to the judges of election, together with the precinct register;

(c) write in the precinct register beside the name of any individual whose qualifications are challenged the words "to be challenged";

(d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged.

History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(1), (2); amd. Sec. 39, Ch. 571, L. 1979.

Cross-References
Challenges on election day, 13-13-301.
Vote by challenged elector, 13-13-311.
Challenges in school elections, 20-20-303.

Part 5

Transfer of Registration

13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.

13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.

13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.

13-2-504 through 13-2-510 reserved.

13-2-511. Transferring registration or changing name. An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose.

History: En. Sec. 28, Ch. 368, L. 1969; R.C.M. 1947, 23-3009; amd. Sec. 40, Ch. 571, L. 1979; Sec. 13-2-501, MCA 1979; redes. 13-2-511 by Code Commissioner, 1979.

13-2-512. Right to vote when precinct or name changed. (1) An elector who has changed his residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where he is registered at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(2) An elector still residing in the same precinct where registered whose name has changed and who has failed to notify the election administrator of the change by a new registration form may vote under his former name at

the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(3) The elector must state his correct residence address and name when offering to vote and must complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

History: **En. Sec. 41, Ch. 571, L. 1979.**

13-2-513. Procedure for transferring registration. The election administrator shall make the necessary corrections in the registration records in his office when he receives a transfer form or corrected registration form if he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file.

History: **En. Sec. 29, Ch. 368, L. 1969; R.C.M. 1947, 23-3010; amd. Sec. 42, Ch. 571, L. 1979; Sec. 13-2-502, MCA 1979; redes. 13-2-513 by Code Commissioner, 1979.**

13-2-514. Change of residence to another county. (1) An elector who changes his residence to a different county within this state must register in his new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes his residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.

(4) The registration of an elector who votes under the provisions of subsection (2) of this section shall be canceled after the election.

History: **En. Sec. 43, Ch. 571, L. 1979.**

Cross-References

Qualifications of voter, 13-1-111.

13-2-515. Inquiry as to previous registration — notices of changes. (1) The election administrator shall check each new registration to ascertain whether the elector has listed previous registration in another county of this state or another state. If the elector has been previously registered, the election administrator shall enter his name on a notice or may photocopy the registration form.

(2) At least once a week and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for counties in this state to the election administrator of the county where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

(3) Once a month and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for

other states to the secretary of state or chief election official of the state where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

History: En. Sec. 30, Ch. 368, L. 1969; R.C.M. 1947, 23-3011; amd. Sec. 44, Ch. 571, L. 1979; Sec. 13-2-503, MCA 1979; redes. 13-2-515 by Code Commissioner, 1979.

Part 6

Effect of Registration

13-2-601. Name on precinct register prima facie evidence of right to vote. An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(1); amd. Sec. 45, Ch. 571, L. 1979.

13-2-602. Joinder of parties in proceedings to compel entry of name in register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969; R.C.M. 1947, 23-3019.

13-2-603. Erroneous omission of name from precinct register. (1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator a certificate of the error, stating the precinct in which he is entitled to vote, and present the certificate which will entitle him to vote to the election judges.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

(3) If the elector's polling place is not located in the city where the election administrator's office is located, the elector may vote by signing an oath that his name was erroneously omitted if the election administrator can confirm such omission by telephone to the chief election judge of the precinct.

History: En. Sec. 39, Ch. 368, L. 1969; R.C.M. 1947, 23-3020; amd. Sec. 46, Ch. 571, L. 1979.

CHAPTER 3

ELECTION PRECINCTS

Part 1 — Election Precincts

Section

13-3-101. Establishment of election precincts.
13-3-102. Change of precinct boundaries.
13-3-103. Certification of boundary changes.
13-3-104. Precincts, wards, and election districts.
13-3-105. Designation of polling place.

Chapter Cross-References

Legislative districting and apportionment, Art. V, sec. 14, Mont. Const.

Reapportionment Commission, Title 5, ch. 1, part 1.

Definitions applicable to this chapter, 13-1-101.

Part 1

Election Precincts

13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

History: **En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(1), (2), (3)(b); amd. Sec. 47, Ch. 571, L. 1979.**

13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.

History: **En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(3)(a), (4); amd. Sec. 48, Ch. 571, L. 1979.**

13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall cause to be prepared and delivered to the election administrator a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

History: **(1)En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; Sec. 23-3101, R.C.M. 1947; (2)En. Sec. 19, Ch. 368, L. 1969; Sec. 23-3102, R.C.M. 1947; R.C.M. 1947, 23-3101(3)(c), 23-3102; amd. Sec. 49, Ch. 571, L. 1979.**

13-3-104. Precincts, wards, and election districts. (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(5), (6); amd. Sec. 50, Ch. 571, L. 1979.

13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

History: En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974; R.C.M. 1947, 23-3103; amd. Sec. 51, Ch. 571, L. 1979; amd. Sec. 1, Ch. 562, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

CHAPTER 4

ELECTION JUDGES

Part 1 — Appointment

Section

13-4-101. Appointment of election judges — other boards of election judges.
13-4-102. Manner of choosing election judges.
13-4-103. Judges to serve until others appointed.
13-4-104. Election administrator to notify judges.
13-4-105. Oath of judges.
13-4-106. Compensation of judges.
13-4-107. Qualifications of election judges.

Part 2 — Functions

13-4-201. Duties of chief election judge.
13-4-202. Administration of oaths.
13-4-203. Instruction of judges — training materials.

13-4-204. Repealed.
13-4-205. Repealed.
13-4-206. Repealed.
13-4-207. Judges to remain at polls — emergency provisions.

Chapter Cross-References
Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to conduct of election officials and judges, 13-35-202.

Part 1

Appointment

13-4-101. Appointment of election judges — other boards of election judges. (1) At least 30 days before the primary election in even-numbered years, the county governing body shall appoint 3 or more election judges for each precinct, one of whom shall be designated chief judge.

(2) A board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.

(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part); amd. Sec. 52, Ch. 571, L. 1979; amd. Sec. 1, Ch. 120, L. 1983.

Compiler's Comments
1983 Amendment: At beginning of (2), changed "A second board" to "A board"; and inserted (3).

Cross-References
Time for primary elections, 13-1-107.
Duties of Counting Board, 13-15-103.

13-4-102. Manner of choosing election judges. (1) Election judges shall be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges shall be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges shall contain judges representing all parties that have submitted lists as provided in subsection (1). No more than a majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2), or if the list is insufficient, any qualified registered elector from the county may be appointed.

History: En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973; R.C.M. 1947, 23-3202; amd. Sec. 54, Ch. 571, L. 1979.

Cross-References
Registration lists, 13-2-115.
Political parties eligible to nominate candidates in primary election, 13-10-601.

13-4-103. Judges to serve until others appointed. The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

History: En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971; R.C.M. 1947, 23-3203; amd. Sec. 55, Ch. 571, L. 1979.

13-4-104. Election administrator to notify judges. The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(1); amd. Sec. 56, Ch. 571, L. 1979.

Cross-References

Notification to county political party chairmen, 13-4-203.

13-4-105. Oath of judges. Before votes are cast, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(1); amd. Sec. 57, Ch. 571, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

13-4-106. Compensation of judges. (1) Election judges shall be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions.

(2) The chief election judge may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for such certification are received.

History: En. Sec. 55, Ch. 368, L. 1969; R.C.M. 1947, 23-3207; amd. Sec. 58, Ch. 571, L. 1979.

Cross-References

Mileage and expenses, Title 2, ch. 18, part 5.

13-4-107. Qualifications of election judges. (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendent, descendent, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

History: En. Sec. 53, Ch. 571, L. 1979.

Part 2

Functions

13-4-201. Duties of chief election judge. The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and shall be responsible for the return of all ballots and election supplies to the election administrator.

History: **En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(2), (3); amd. Sec. 59, Ch. 571, L. 1979.**

13-4-202. Administration of oaths. Any election judge may administer and certify oaths required during an election.

History: **En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(2); amd. Sec. 60, Ch. 571, L. 1979.**

13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction shall be instructed by the election administrator. In precincts where voting machines or devices are used, instructions shall cover both machines or devices and paper ballots.

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only.

(3) Any individual willing to be appointed an election judge may attend an instruction session by registering with the election administrator. Such individuals may not be paid for attendance unless they are appointed election judges.

(4) The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.

(5) Each election judge completing a training session shall be given a certificate of completion. No individual may serve as an election judge without a valid certificate. However, this does not apply to individuals filling vacancies in emergencies.

(6) All certificates of completion expire 30 days before the primary election in even-numbered years.

(7) Notice of place and time of instruction must be given by the election administrator to the county chairmen of the political parties.

History: **En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971; R.C.M. 1947, 23-3206; amd. Sec. 61, Ch. 571, L. 1979.**

Cross-References

Notification to judges, 13-4-104.

13-4-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part).**

13-4-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(3).**

13-4-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(4).**

13-4-207. Judges to remain at polls — emergency provisions. (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

History: En. Sec. 62, Ch. 571, L. 1979.

Cross-References

Voting of election judges by absentee ballot, 13-13-201.

CHAPTERS 5 THROUGH 9

RESERVED

CHAPTER 10

PRIMARY ELECTIONS AND NOMINATIONS

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Section
13-10-101. Repealed.

Part 2 — Preprimary Procedures

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13-10-202. Filing fees.
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13-10-311. Election judges' duties upon closing of polls.

13-10-312 through 13-10-321. Repealed.
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13-10-602. Use of party name.
13-10-603. Repealed.
13-10-604. Nominations for minor parties.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Times for holding primary elections, 13-1-107.

Criminal provisions relating to primary elections and nominations, Title 13, ch. 35.

Part 1

General Provisions

13-10-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 58, Ch. 368, L. 1969; R.C.M. 1947, 23-3303.

Part 2

Preprimary Procedures

13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination shall be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination shall be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(5) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination shall be filed no sooner than the first business day in January of an election year for that office and no later than 5 p.m., 50 days before the date of the primary election.

History: (1) thru (5)En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; Sec. 23-3304, R.C.M. 1947; (6)En. Sec. 60, Ch. 368, L. 1969; amd. Sec. 15, Ch. 365, L. 1977; Sec. 23-3305, R.C.M. 1947; R.C.M. 1947, 23-3304(1) thru (4), (8), 23-3305; amd. Sec. 63, Ch. 571, L. 1979.

Cross-References

Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.

Acknowledgment of instruments, Title 1, ch. 5.

General qualifications of persons seeking election to public office, 2-16-102.

Resignation of judges required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Election Administrator, 13-1-301.

Petition for nomination in presidential preference primary, 13-10-405, 13-10-406.

Declaration of nomination in nonpartisan election, 13-14-112, 13-14-113.

Criminal provisions relating to declaration of nomination, 13-35-205 through 13-35-207, 13-35-221.

13-10-202. Filing fees. Filing fees are as follows:

(1) for offices having an annual salary of $2,500 or less and candidates for the legislature, $15;

(2) for county offices having an annual salary of more than $2,500, 0.5% of the total annual salary;

(3) for other offices having an annual salary of more than $2,500, 1% of the total annual salary;

(4) for offices in which compensation is paid in fees, $10;

(5) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(5); amd. Sec. 64, Ch. 571, L. 1979.

Cross-References

Salaries of certain elected state officials, 2-16-405.

Salaries of certain county officers, 7-4-2503.

Filing fees not to be refunded if candidate withdraws, 13-10-325.

No fee for filing presidential preference primary petition, 13-10-405.

13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a verified statement that he is unable to pay the filing fee;

(2) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) contains the name of the office to be filled and the candidate's name and residence address;

(b) contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(7); amd. Sec. 65, Ch. 571, L. 1979.

Cross-References

Equal protection of the laws, Art. II, sec. 4, Mont. Const.

13-10-204. Write-in nominations. An individual nominated by having his name written in on the primary ballot and desiring to accept the nomination may not have his name printed on the general election ballot unless he:

(1) files with the secretary of state or election administrator no later than 10 days after the official canvass, a written declaration indicating his acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(6); amd. Sec. 66, Ch. 571, L. 1979.

Cross-References

Write-in votes for previously nominated candidates, 13-10-302.

Acceptance of write-in nomination by independent candidate, 13-10-305.

Declaration or certification withheld for failure to file acceptance, 13-15-405, 13-15-507.

13-10-205. Register of candidates. The secretary of state and the election administrator shall each keep a register of candidates who file with their respective offices. The register shall provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state shall prepare and distribute a recommended format for the register.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(1), (2); amd. Sec. 67, Ch. 571, L. 1979.

13-10-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(3).

13-10-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(4).

13-10-208. Certificate of primary ballot — printing ballot. (1) Not more than 50 days and not less than 42 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of his office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 40 days and not less than 30 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of his office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

History: En. Sec. 62, Ch. 368, L. 1969; R.C.M. 1947, 23-3307; amd. Sec. 68, Ch. 571, L. 1979.

Cross-References

Other election ballots, 13-12-201.

13-10-209. Arrangement of ballots. (1) Ballots for a primary election shall be arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there shall be separate ballots for each political party entitled to participate and separate nonpartisan and ballot issue ballots if necessary. The name of the political party shall be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.

(2) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(3) The separate ballots for each party shall be the same size and color. The stubs of each set of party ballots shall bear the same number. The nonpartisan ballot shall be a different size or color than the party ballots, but the stubs shall be numbered in the same order as the party ballots.

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(1), (2), (7); amd. Sec. 69, Ch. 571, L. 1979.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of ballots in other elections, 13-12-203.

13-10-210. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 64, Ch. 368, L. 1969; R.C.M. 1947, 23-3309.

Part 3

Primary Election Procedure

13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures shall be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall mark only one of the set of party ballots. After marking any other ballots received other than the party ballots, the elector shall fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge.

(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked. If the judge determines the ballots may be voted, he shall, in the presence of the elector:

(a) remove the stubs from all the ballots;

(b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;

(c) and deposit the marked ballots in the voted ballot box.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(8), (9); amd. Sec. 70, Ch. 571, L. 1979.

Cross-References

General election procedures, Title 13, ch. 13.

13-10-302. Write-in votes for previously nominated candidates. If an elector writes the name of an individual upon a primary party ballot when the individual's name appears as a candidate for the same office on another party ballot, the vote shall count for the individual only as a candidate of the party upon whose ballot his name is written and the votes cast on the separate party ballots may not be added together.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(3); amd. Sec. 71, Ch. 571, L. 1979.

13-10-303. Nominations by more than one party. If an individual is nominated by more than one party, he shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which his name is to appear upon the ballot for the general election. If he fails to notify the proper officers, his name shall appear under the party with whom his declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, his name shall be printed on the ballot without a party designation.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(4); amd. Sec. 72, Ch. 571, L. 1979.

Cross-References

Printing of candidate's name and party designation, 13-12-203.

13-10-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(5).

13-10-305. Independent forfeits place on ballot. An individual who has filed as an independent candidate forfeits his place on the general election ballot as an independent candidate if he accepts a write-in nomination for an office as provided in 13-10-204.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(6); amd. Sec. 73, Ch. 571, L. 1979.

13-10-306 through 13-10-310 reserved.

13-10-311. Election judges' duties upon closing of polls. (1) The election judges at the primary election shall separate the ballots for each political party and count each party's ballots separately.

(2) They shall reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations shall be handled as provided in 13-15-201(3).

(3) Each party's candidates shall be listed separately in the tally books.

(4) The voted ballots of each party shall be bundled separately for return to the election administrator. The unvoted ballots deposited in the stub box shall be bundled with the stubs.

History: En. Sec. 65, Ch. 368, L. 1969; R.C.M. 1947, 23-3310; amd. Sec. 74, Ch. 571, L. 1979.

13-10-312 through 13-10-321. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-10-312. En. Sec. 66, Ch. 368, L. 1969; amd. Sec. 17, Ch. 365, L. 1977; R.C.M. 1947, 23-3311.

13-10-313. En. Sec. 67, Ch. 368, L. 1969; amd. Sec. 18, Ch. 365, L. 1977; R.C.M. 1947, 23-3312.

13-10-314. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(1).

13-10-315. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(6).

13-10-316. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(5).

13-10-317. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(3), (4).

13-10-318. (1)En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; Sec. 23-3313, R.C.M. 1947; (2) thru (4)En. Sec. 69, Ch. 368, L. 1969; amd. Sec. 3, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 20 Ch. 365, L. 1977; Sec. 23-3314, R.C.M. 1947; R.C.M. 1947, 23-3313(2), 23-3314.

13-10-319. En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(10).

13-10-320. En. Sec. 79, Ch. 368, L. 1969; amd. Sec. 24, Ch. 365, L. 1977; R.C.M. 1947, 23-3319.

13-10-321. En. Sec. 70, Ch. 368, L. 1969; amd. Sec. 22, Ch. 365, L. 1977; R.C.M. 1947, 23-3315.

13-10-322 through 13-10-324 reserved.

13-10-325. Withdrawal from nomination. (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 30 days before an election.

(2) Filing fees paid by the candidate may not be refunded.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(1); amd. Sec. 75, Ch. 571, L. 1979.

Cross-References

Officers who may administer oaths, 1-6-101.

Withdrawal based on promise or payment of consideration unlawful, 13-35-221.

13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 40 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If the death or withdrawal occurs less than 40 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(2); amd. Sec. 76, Ch. 571, L. 1979.

Cross-References

Labels to be prepared if replacement made after printing of ballot, 13-12-204.

Power of political party to appoint replacement, 13-38-101, 13-38-204.

13-10-327. Vacancy after primary and prior to general election. (1) If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than 40 days before the election. A candidate may not officially withdraw 50 days or less before a general election. However, if a candidate for partisan office dies less than 40 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(3); amd. Sec. 77, Ch. 571, L. 1979.

Cross-References

Vacancy in executive branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.

Acknowledgment of instruments, Title 1, ch. 5.

Vacancy in House or Senate, Title 5, ch. 2, part 4.

Vacancy in county office, 7-4-2106, 7-4-2206.

Declaration for nomination, 13-10-201.

Labels to be prepared if replacement made after printing of ballot, 13-12-204.

Power of political party to appoint replacement, 13-38-101, 13-38-204.

Vacancy in office of County Superintendent of Schools, 20-3-202.

Vacancy in office of School District Trustee, 20-3-309.

Vacancy in office of Community College District Trustee, 20-15-223.

Vacancy in office of Conservation District Supervisor, 76-15-312.

13-10-328. Vacancy in governor or lieutenant governor candidacy. The death or withdrawal of a candidate for governor or lieutenant governor does not affect the candidacy of the other joint candidate.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(4); amd. Sec. 78, Ch. 571, L. 1979.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.

Death or disqualification of governor-elect, Art. VI, sec. 14, Mont. Const.

Part 4

Presidential Preference Primary

13-10-401. Date of presidential primary. In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in 13-1-107.

History: En. 23-3322 by Sec. 1, Ch. 162, L. 1974; R.C.M. 1947, 23-3322; amd. Sec. 79, Ch. 571, L. 1979.

13-10-402. Ballot. The regular party primary ballots shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

History: En. 23-3323 by Sec. 2, Ch. 162, L. 1974; R.C.M. 1947, 23-3323; amd. Sec. 80, Ch. 571, L. 1979.

Cross-References

Ballots for primary elections, 13-10-209.

13-10-403. Form of ballot. The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space.

History: En. 23-3324 by Sec. 3, Ch. 162, L. 1974; R.C.M. 1947, 23-3324; amd. Sec. 81, Ch. 571, L. 1979.

13-10-404. Nomination petition. Before a presidential candidate may qualify for placement on the ballot, he must be nominated on petitions with the verified signatures of at least 1,000 qualified electors from each congressional district. The secretary of state is empowered to prescribe the form and content of the petition.

History: **En. 23-3325 by Sec. 4, Ch. 162, L. 1974; R.C.M. 1947, 23-3325.**

Cross-References

Criminal provisions relating to signing petition, 13-35-207.

13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election must be presented to the election administrator of the county in which the signatures are gathered. The election administrator must verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state. The petitions must be submitted to the election administrator at least 30 days before the filing deadline established in 13-10-201(6). No filing fee is required.

History: **En. 23-3326 by Sec. 5, Ch. 162, L. 1974; amd. Sec. 28, Ch. 342, L. 1977; R.C.M. 1947, 23-3326; amd. Sec. 82, Ch. 571, L. 1979.**

13-10-406. Notification of candidates. If the signatures and petitions fulfill the requirements of this part, the secretary of state shall immediately notify the candidates named on the petitions that they shall be placed upon the presidential preference primary election ballot, unless they file with the secretary of state a notarized affidavit that they are not a candidate for president. The notification of the candidate shall be made at least 15 days before the filing deadline established in 13-10-201(6). The affidavit of noncandidacy must reach the secretary of state by the filing deadline established in 13-10-201(6).

History: **En. 23-3327 by Sec. 6, Ch. 162, L. 1974; R.C.M. 1947, 23-3327.**

13-10-407. Delegates to national presidential nominating conventions. The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

History: **En. 23-3328 by Sec. 7, Ch. 162, L. 1974; R.C.M. 1947, 23-3328.**

Part 5

Methods of Nomination Other Than by Primary Election

13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election. (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party which does not meet the requirements of 13-10-601 may be made by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle which such body represents.

(4) The form of the petition shall be prescribed by the secretary of state, and he shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(1), (2); amd. Sec. 83, Ch. 571, L. 1979.

Cross-References

Procedure for independent filing for vacancy in office of State Senator, 5-2-406.

Procedure for independent filing for vacancy on Board of County Commissioners, 7-4-2106.

Procedure for independent filing for vacancy in county office, 7-4-2206.

Qualifying political party may request appointment of deputy registrars, 13-2-102.

13-10-502. Signature requirements for petition. (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and printed last name of the signer.

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the secretary of state shall determine the number of signatures required for a petition of nomination for that office.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(3), (4); amd. Sec. 84, Ch. 571, L. 1979.

Cross-References

Vacancy in office of State Senator, 5-2-406.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in county office, 7-4-2206.

Criminal provisions relating to signing petition, 13-35-207.

13-10-503. Filing deadlines. (1) A petition for nomination, accompanied by the required filing fee, shall be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition shall be filed on or before the filing deadline for the primary election or for the special or general election if no primary election is scheduled.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(5); amd. Sec. 85, Ch. 571, L. 1979; amd. Sec. 1, Ch. 437, L. 1983.

Compiler's Comments

1983 Amendment: In second sentence of (1), after "Petitions" deleted "to be filed with the secretary of state"; changed "must first be submitted" to "must be submitted"; inserted last sentence of (1) dealing with insufficient signatures.

Cross-References

Officers for filing of petitions — filing deadline for primary elections, 13-10-201.

13-10-504. Independent or minor party candidates for president or vice president. (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 must file a petition for nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election. The names of the candidates for the required number of presidential electors allowable to Montana shall be certified to the secretary of state when the petition for nomination is filed.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(6); amd. Sec. 86, Ch. 571, L. 1979.

Cross-References

Times for holding general elections, 13-1-104.

13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except as provided in 13-25-205.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(7); amd. Sec. 87, Ch. 571, L. 1979.

13-10-506. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 6, 2nd Ex. L. 1971; R.C.M. 1947, 23-3318.1.

Part 6

Nominations by Political Parties

13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Every political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 50 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week

before the deadline for submitting the verified petition to the secretary of state.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(1); amd. Sec. 88, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

Cross-References

Deputy registrars equally divided among parties, 13-2-102.

Nominations by parties unable to meet requirements of this section, Title 13, ch. 10, part 5.

Nomination of presidential electors, 13-25-101.

13-10-602. Use of party name. (1) Every political party and its regularly nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(2) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(2), (3).**

13-10-603. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(4).**

13-10-604. Nominations for minor parties. Any political party that does not qualify under the provisions of 13-10-601 may make nominations for public office as provided in 13-10-501 through 13-10-505.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(5); amd. Sec. 89, Ch. 571, L. 1979.**

CHAPTER 11

ELECTION PROCLAMATION

(Sections 13-11-101 through 13-11-103 repealed.
Sec. 407, Ch. 571, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

13-11-101. En. Sec. 13, Ch. 368, L. 1969; amd. Sec. 7, Ch. 365, L. 1977; R.C.M. 1947, 23-2901.

13-11-102. En. Sec. 14, Ch. 368, L. 1969; R.C.M. 1947, 23-2902.

13-11-103. En. Sec. 15, Ch. 368, L. 1969; R.C.M. 1947, 23-2903.

CHAPTER 12

ELECTION SUPPLIES AND BALLOTS

Part 1 — Election Supplies

Section
13-12-101. Copies of election laws to be furnished.
13-12-102. Items to be furnished by election administrators.
13-12-103. Repealed.
13-12-104. Repealed.
13-12-105. Repealed.

Part 2 — Ballots

13-12-201. Secretary of state to certify ballot.
13-12-202. Ballot form and uniformity.
13-12-203. Printing of candidate's name and party designation on ballot.
13-12-204. Labels to be printed and distributed where vacancy has been filled.
13-12-205. Arrangement of names — rotation on ballot.
13-12-206. Repealed.
13-12-207. Order of placement.
13-12-208. Provision for write-in votes.
13-12-209. Paper ballots — stub size — content.
13-12-210. Number of ballots to be provided for each precinct.
13-12-211. Repealed.
13-12-212. Election administrator to provide printed ballots — other ballots prohibited.
13-12-213. Repealed.
13-12-214. Sample ballots.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Criminal provisions relating to election supplies and ballots, Title 13, ch. 35.

Part 1

Election Supplies

13-12-101. Copies of election laws to be furnished. (1) The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in his county with two copies and to provide a small extra supply for the administrator.

(2) The secretary of state shall, at the expense of the state, furnish the election administrator with copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections. The public official with whom a candidate files a declaration, petition, or acceptance of nomination shall transmit one copy to the candidate. A copy shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any elector, the secretary of state shall provide a copy to any other individual who is a candidate or who is required to make a statement required by this title.

History: (1)En. Sec. 16, Ch. 368, L. 1969; Sec. 23-2904, R.C.M. 1947; (2)En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977; Sec. 23-4794, R.C.M. 1947; R.C.M. 1947, 23-2904, 23-4794; amd. Sec. 90, Ch. 571, L. 1979; amd. Sec. 1, Ch. 121, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), after "shall" substituted "furnish to each election administrator copies of this title sufficient to provide" for "publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each election administrator to furnish"; and at end of (1), inserted "for the administrator".

13-12-102. Items to be furnished by election administrators. The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots.

The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

History: Ap.p. Sec. 84, Ch. 368, L. 1969; Sec. 23-3501, R.C.M. 1947; Ap.p. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R.C.M. 1921; Cal. Pol. C. Sec. 4064; re-en. Sec. 4515, R.C.M. 1935; Sec. 16-1156, R.C.M. 1947; R.C.M. 1947, 16-1156, 23-3501; amd. Sec. 91, Ch. 571, L. 1979.

13-12-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 85, Ch. 368, L. 1969; R.C.M. 1947, 23-3502.

13-12-104. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 86, Ch. 368, L. 1969; R.C.M. 1947, 23-3503.

13-12-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 87, Ch. 368, L. 1969; R.C.M. 1947, 23-3504.

Part 2

Ballots

13-12-201. Secretary of state to certify ballot. (1) Fifty days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126, and shall have the official ballots printed.

History: En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979.

13-12-202. Ballot form and uniformity. (1) The secretary of state shall prescribe the ballot form for all types of ballots used in this state.

(2) The names of all candidates printed upon the ballots shall be in type of the same size and character.

(3) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of every candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States shall appear on the ballot as provided in 13-25-101(2).

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979.

Cross-References

Nonpartisan candidates to appear, 13-14-117.

13-12-203. Printing of candidate's name and party designation on ballot. (1) Except as provided in 13-10-209 and 13-10-303, in partisan elections, candidates' names shall be printed under the title of the office sought, with the name of the party, in not more than three words, or "Independent" printed opposite the name.

(2) In nonpartisan elections, the candidates' names shall be printed under the title of the office sought, with no description or designation printed with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates shall have printed with them the words "Nominated without party designation".

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979.

13-12-204. Labels to be printed and distributed where vacancy has been filled. (1) If an appointment has been made to replace a candidate as provided in 13-10-326 or 13-10-327 after the ballots have been printed but before the election, the election administrator shall order labels printed containing the name of the new nominee and any other information required to go on the ballot.

(2) The election administrator shall affix the labels in the proper place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979.

13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

(2) If two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.

(3) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(4) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(5) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor shall be considered as a group.

(6) No more than one of the sets may be used in printing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

History: En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979.

Cross-References

Arrangement of ballot in primary election, 13-10-209.

Arrangement of names in conservation district election, 76-15-303.

13-12-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 95, Ch. 368, L. 1969; amd. Sec. 28, Ch. 365, L. 1977; R.C.M. 1947, 23-3512.

13-12-207. Order of placement. (1) The order on the ballot for state and national offices shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party shall be grouped together.

(b) United States senator;
(c) United States representative;
(d) Governor and lieutenant governor;
(e) Secretary of state;
(f) Attorney general;
(g) State auditor;
(h) Public service commissioners;
(i) State superintendent of public instruction;
(j) Clerk of the supreme court;
(k) Chief justice of the supreme court;
(l) Justices of the supreme court;
(m) District court judges;
(n) State senators;
(o) Members of the house of representatives.

(2) The following order of placement shall be observed for county offices:
(a) clerk of the district court;
(b) county commissioner;
(c) county clerk and recorder;
(d) sheriff;
(e) coroner;
(f) county attorney;
(g) county superintendent of schools;
(h) county auditor;
(i) public administrator;
(j) county assessor;
(k) county treasurer;
(l) surveyor;
(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, consolidated, or confederated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments shall be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision shall follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they shall not be listed, but the order of the offices to be filled shall be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

History: Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947;

Ap. p. Sec. 100, Ch. 368, L. 1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979.

13-12-208. Provision for write-in votes. Below the list of names of candidates for each office there must be as many blank spaces for write-in voting as there are officers to be elected.

History: En. Sec. 97, Ch. 368, L. 1969; R.C.M. 1947, 23-3514; amd. Sec. 98, Ch. 571, L. 1979.

13-12-209. Paper ballots — stub size — content. (1) Paper ballots shall be printed on the same sheet with a stub, separated by perforation.

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed the following:

This ballot should be marked with an "x" in the square before the name of each individual or candidate for whom the elector intends to vote. The elector may write in or affix a preprinted label in the blank spaces or over any other name, the name of an individual for whom he wishes to vote and vote by marking an "x" in the square before the name. If a ballot contains a constitutional amendment or other issue to be submitted to a vote of the people, it is voted on by marking an "x" in the square before the amendment or issue.

(4) On the stub shall be printed or stamped the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969; amd. Sec. 1, Ch. 414, L. 1975; amd. Sec. 30, Ch. 365, L. 1977; R.C.M. 1947, 23-3515; amd. Sec. 99, Ch. 571, L. 1979.

13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in his office showing the exact number of ballots that are delivered to the election judges of each precinct.

History: En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979.

13-12-211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 90, Ch. 368, L. 1969; R.C.M. 1947, 23-3507.

13-12-212. Election administrator to provide printed ballots — other ballots prohibited. Except as otherwise provided in the election laws of this state:

(1) the election administrator shall provide printed ballots for every election. He shall have printed on the ballot the names of all candidates for all offices to be filled at the election and the title and other wording required by law for all ballot issues.

(2) ballots other than those printed by the election administrator may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979.

Cross-References

Ballot form for ballot issues, 13-27-501.

13-12-213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(1) thru (3).

13-12-214. Sample ballots. The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

History: En. Sec. 102, Ch. 571, L. 1979.

CHAPTER 13

ELECTION PROCEDURE

Part 1 — Procedure at Polling Place

Section

13-13-101. Duties — proclamation prior to opening and closing polls.
13-13-102 through 13-13-110. Repealed.
13-13-111. Provision and use of election booths, voting machines, or voting devices.
13-13-112. Display of instructions for electors.
13-13-113. Warning notice to be posted.
13-13-114. Marking precinct register book before elector votes.
13-13-115. Pollbooks.
13-13-116. Ballots to be stamped — one ballot to elector.
13-13-117. Method of voting.
13-13-118. Taking ballot to disabled elector.
13-13-119. Aid to disabled elector.
13-13-120. Poll watchers — announcement of elector's name.
13-13-121. Additional poll watchers.
13-13-122. Preventing obstructions.

Part 2 — Procedure for Electors Absent from the Polling Place

13-13-201. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
13-13-202. Repealed.
13-13-203. Absentee ballots where voting machines or devices used.
13-13-204. Authority to vote in person — printing error or ballot destroyed — effect of absentee elector's death.
13-13-205. When ballots to be available.
13-13-206 through 13-13-210 reserved.
13-13-211. Application of absentee or physically incapacitated elector for ballot.
13-13-212. Application for absentee ballot.
13-13-213. Transmission of application to election administrator.
13-13-214. Mailing ballot to elector.
13-13-215 through 13-13-220 reserved.
13-13-221. Marking and affirming ballot.
13-13-222. Voting before election day by prospective absentee or physically incapacitated elector.
13-13-223 through 13-13-230 reserved.
13-13-231. Disposition of marked ballot upon receipt by election administrator.
13-13-232. Delivery of ballots to election judges — ballots to be rejected.
13-13-233. Issue and record of absentee ballots — certificate.
13-13-234. Duty of election judges — pollbook.
13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.
13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.
13-13-237. Repealed.

13-13-238. Repealed.
13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.
13-13-240. Repealed.
13-13-241. Examination of absentee ballot envelopes and affirmations while polls open.
13-13-242. Procedure for absentee ballots after polls close.
13-13-243. Rejected absentee ballots.
13-13-244. Opening of envelopes after deposit.

Part 3 — Challenges

13-13-301. Challenges on election day.
13-13-302. Repealed.
13-13-303. Repealed.
13-13-304. Duties of election judges in response to challenges.
13-13-305. Election judges' powers concerning challenges.
13-13-306. Proceedings pursuant to challenges — oaths.
13-13-307. Determination of challenges.
13-13-308. Repealed.
13-13-309. Proceedings after determination of challenge.
13-13-310. List of challenges to be kept.
13-13-311. Vote by challenged elector.

Chapter Cross-References

Suffrage and elections, Art. IV, Mont. Const.

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to election procedures, Title 13, ch. 35.

Part 1

Procedure at Polling Place

13-13-101. Duties — proclamation prior to opening and closing polls. (1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969; R.C.M. 1947, 23-3602; amd. Sec. 103, Ch. 571, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oath of judges, 13-4-105.

13-13-102 through 13-13-110. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-13-102. En. Sec. 101, Ch. 368, L. 1969; R.C.M. 1947, 23-3601.

13-13-103. En. Sec. 103, Ch. 368, L. 1969; R.C.M. 1947, 23-3603.

13-13-104. En. Sec. 110, Ch. 368, L. 1969; amd. Sec. 3, Ch. 254, L. 1971; amd. Sec. 32, Ch. 365, L. 1977; R.C.M. 1947, 23-3610.

13-13-105. En. Sec. 104, Ch. 368, L. 1969; R.C.M. 1947, 23-3604.

13-13-106. En. Sec. 106, Ch. 368, L .1969; amd. Sec. 31, Ch. 365, L. 1977; R.C.M. 1947, 23-3606.

13-13-107. (1)En. Sec. 107, Ch. 368, L. 1969; amd. Sec. 42, Ch. 334, L. 1977; Sec. 23-3607, R.C.M. 1947; (2)En. Sec. 108, Ch. 368, L. 1969; Sec. 23-3608, R.C.M. 1947; R.C.M. 1947, 23-3607, 23-3608.

13-13-108. En. Sec. 109, Ch. 368, L. 1969; R.C.M. 1947, 23-3609.

13-13-109. En. Sec. 118, Ch. 368, L. 1969; R.C.M. 1947, 23-3618.

13-13-110. En. Sec. 105, Ch. 368, L. 1969; amd. Sec. 41, Ch. 334, L. 1977; R.C.M. 1947, 23-3605.

13-13-111. Provision and use of election booths, voting machines, or voting devices. (1) The election administrator shall provide a sufficient number of booths, voting machines, or voting devices to allow voting to proceed with as little delay as possible. Booths, voting machines, or voting devices must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted, and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted.

(2) No more than one individual may occupy a booth at one time except when assistance is furnished an elector as provided by law. No individual may occupy a booth or use a voting machine or device longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 571, L. 1979.

Cross-References

Secret ballot requirement, Art. IV, sec. 1, Mont. Const.

Provisions relating to disabled electors, 13-13-118, 13-13-119.

Criminal provisions relating to ballot secrecy, 13-35-201, 13-35-202.

13-13-112. Display of instructions for electors. (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type and explain how to:

(a) obtain ballots for voting;

(b) prepare ballots for deposit in the ballot box; and

(c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, shall be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices.

History: En. Sec. 105, Ch. 571, L. 1979.

Cross-References

Criminal provisions relating to injury to election materials, 13-35-206.

13-13-113. Warning notice to be posted. Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

History: **En. Sec. 106, Ch. 571, L. 1979.**

13-13-114. Marking precinct register book before elector votes. (1) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his name and current address. If the name or address is not as listed in the precinct register, the elector must complete a transfer form or new registration form to correct the information. The election judges shall write "transfer form" or "registration form" beside the name of any elector submitting a form. No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.

(2) The election judges shall require an elector not able to sign his name to produce two electors who shall sign an affidavit stating that the elector is the individual whose name and address appears in the precinct register before one or more of the election judges on a form prescribed by the secretary of state. The affidavit shall be filed by the election judges and returned to the election administrator with the returns of the election. One of the judges shall write the elector's name, noting the fact of his inability to sign, and the names of the two electors signing the affidavit.

(3) If the elector fails or refuses to sign his name or, if unable to write, fails to procure two electors who will take the oath required, he may not vote.

History: **En. Sec. 107, Ch. 571, L. 1979.**

13-13-115. Pollbooks. (1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector.

(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting.

History: **En. Sec. 108, Ch. 571, L. 1979.**

13-13-116. Ballots to be stamped — one ballot to elector. (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the back near the top of the ballot. No part of the stamp may appear on the stub. They shall also stamp the name of the county, the number of the precinct, the date of the election, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election.

History: **En. Sec. 109, Ch. 571, L. 1979.**

Cross-References

Stamping of absentee ballot, 13-13-214.

13-13-117. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space or over any other name and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector.

(5) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(6) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(7) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(8) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 110, Ch. 571, L. 1979.

13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating he is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce he has "a ballot offered by ...... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

History: En. Sec. 111, Ch. 571, L. 1979.

13-13-119. Aid to disabled elector. (1) The election judges or a qualified elector of the county chosen by the disabled elector may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The election judges shall require the declaration of disability by the elector to be under oath and may administer the oath.

(3) The elector may be assisted by two judges who represent different parties. The judges must certify on the precinct register opposite the disabled

elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(4) Instead of assistance as provided in subsection (3), the elector may request the assistance of any qualified elector of the county whom he designates to the judges to aid him in the marking of his ballot, and the elector chosen shall sign his name on the precinct register beside the name of the elector assisted.

(5) No elector other than the one who requires assistance may divulge to anyone within the polling place the name of any candidate for whom he intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of his ballot.

History: **En. Sec. 112, Ch. 571, L. 1979.**

13-13-120. Poll watchers — announcement of elector's name. The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

History: **En. Sec. 113, Ch. 571, L. 1979.**

13-13-121. Additional poll watchers. A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

History: **En. Sec. 114, Ch. 571, L. 1979.**

13-13-122. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

History: **En. Sec. 115, Ch. 571, L. 1979.**

Cross-References

"Peace officer" defined, 46-1-201.

Part 2

Procedure for Electors Absent from the Polling Place

13-13-201. Voting by elector when absent from place of residence or physically incapacitated from going to polls. (1) A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in this part.

(2) Election judges who will be serving in a different precinct than the one in which they are registered may vote by absentee ballot.

History: **En. Sec. 119, Ch. 368, L. 1969; R.C.M. 1947, 23-3701; amd. Sec. 116, Ch. 571, L. 1979.**

13-13-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 132, Ch. 368, L. 1969; R.C.M. 1947, 23-3714.**

13-13-203. Absentee ballots where voting machines or devices used. (1) In precincts where voting machines or devices are used, the election administrator shall if necessary print and provide:

(a) ballots in official form for possible absent or physically incapacitated electors; and

(b) ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

History: **En. Sec. 134, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(1), (2); amd. Sec. 117, Ch. 571, L. 1979.**

13-13-204. Authority to vote in person — printing error or ballot destroyed — effect of absentee elector's death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions or if the absentee ballot was destroyed, the elector may vote in person in any manner at his polling place.

(2) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count.

History: **En. Sec. 127, Ch. 571, L. 1979; amd. Sec. 2, Ch. 120, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted existing (1) for former language, which read: "If an elector has voted by absentee ballot but on election day is present in the county and able to go to the polls or if he learns his absentee ballot has been rejected by the judges as provided in 13-13-241, the elector may vote in person at his polling place. If voting machines or devices are used, he may vote by machine or device."

13-13-205. When ballots to be available. The election administrator shall ensure that ballots are printed and available for absentee voting at least 14 days prior to an election.

History: **En. Sec. 2, Ch. 586, L. 1983.**

Cross-References

Voting by prospective absentee or physically incapacitated elector, 13-13-222.

13-13-206 through 13-13-210 reserved.

13-13-211. Application of absentee or physically incapacitated elector for ballot. During a period beginning 75 days before the day of election and ending at noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the election administrator for an absentee ballot.

History: **En. Sec. 121, Ch. 368, L. 1969; amd. Sec. 1, Ch. 145, L. 1975; R.C.M. 1947, 23-3703; amd. Sec. 118, Ch. 571, L. 1979.**

13-13-212. Application for absentee ballot. (1) Application for absentee ballots shall be made by a written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.

History: En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975; R.C.M. 1947, 23-3704; amd. Sec. 119, Ch. 571, L. 1979.

13-13-213. Transmission of application to election administrator. (1) The elector shall forward the application by mail or deliver it in person to the election administrator.

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

History: En. Sec. 123, Ch. 368, L. 1969; R.C.M. 1947, 23-3705; amd. Sec. 120, Ch. 571, L. 1979.

13-13-214. Mailing ballot to elector. (1) As soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom he has received a valid application whatever official ballots are necessary. Ballots shall be sent immediately to electors submitting valid requests after the official ballots are printed.

(2) The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state shall be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots sent to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face such information and graphics and be of such color as may be prescribed by the secretary of state consistent with the regulations established by the federal election commission, U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so it can be identified as being used by any one elector.

(6) Instructions for voting shall be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

(7) The return envelope shall be self-addressed to the election administrator.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975; R.C.M. 1947, 23-3706; amd. Sec. 121, Ch. 571, L. 1979; amd. Sec. 1, Ch. 110, L. 1983.

Compiler's Comments

1983 Amendment: In (4), following "across the face" substituted remainder of subsection for "two parallel horizontal red bars, each ¼-inch wide, extending from one side of the envelope to the other with an intervening space of ¼-inch, with the words "Official Election Ballot Material—via Air Mail" between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage". In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subsection (6) shall include a procedure to be followed by absentee electors, such as notation of the facts on the back of the envelope, duly signed by the elector, in instances of adhesion of the balloting material."

13-13-215 through 13-13-220 reserved.

13-13-221. Marking and affirming ballot. (1) After the elector marks his ballots, he shall fold them so that the vote is concealed and so that the official stamp is visible. The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.

(2) The elector shall place the ballots in the envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the party ballot or ballots not voted shall be placed in the envelope marked for that purpose and enclosed in the outer envelope with the voted ballots.

(3) The elector shall complete and sign the affirmation on the envelope.

(4) The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator.

History: En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975; R.C.M. 1947, 23-3707; amd. Sec. 122, Ch. 571, L. 1979.

13-13-222. Voting before election day by prospective absentee or physically incapacitated elector. (1) As soon as the official ballots are available, the election administrator shall permit an elector who is present in his county and who has reason to believe that he will be absent from the county or physically incapacitated on election day to vote before election day before the election administrator.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the election administrator, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975; R.C.M. 1947, 23-3712; amd. Sec. 123, Ch. 571, L. 1979; amd. Sec. 1, Ch. 586, L. 1983.

Compiler's Comments

1983 Amendment: In (1), at beginning inserted "As soon as the official ballots are available, the election administrator shall permit", and after "his county" deleted "after the official ballots have been printed".

Cross-References

When ballots to be available, 13-13-205.
Disposition of absentee ballot, 13-13-231.

13-13-223 through 13-13-230 reserved.

13-13-231. Disposition of marked ballot upon receipt by election administrator. (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in his office until delivered by him.

History: En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977; R.C.M. 1947, 23-3708; amd. Sec. 124, Ch. 571, L. 1979.

13-13-232. Delivery of ballots to election judges — ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the envelopes to the judges.

(3) If absentee ballots for which an application was not received prior to noon on the day preceding an election are received by the election administrator or if absentee ballots are received by the election administrator after the close of the polls, he shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots so endorsed shall be retained by the election administrator and placed with the proper records when they are returned to him.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(1) thru (3); amd. Sec. 125, Ch. 571, L. 1979.

13-13-233. Issue and record of absentee ballots — certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The election administrator shall deliver to the chief election judges to whom the ballots are delivered a certificate stating:

(a) the number of absentee ballots delivered as well as those marked before him;

(b) the number of ballots retained for late absentee voting; and

(c) the names of the electors to whom such ballots were delivered or by whom they have been marked if marked before him.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

History: En. Sec. 128, Ch. 368, L. 1969; R.C.M. 1947, 23-3710; amd. Sec. 126, Ch. 571, L. 1979; amd. Sec. 3, Ch. 120, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (4).

13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall note on the pollbook opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated electors. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the election administrator and the number of his ballot.

History: En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977; R.C.M. 1947, 23-3711; amd. Sec. 128, Ch. 571, L. 1979.

13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.

13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.

13-13-237. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(10).

13-13-238. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(11).

13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.

13-13-240. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(4).

13-13-241. Examination of absentee ballot envelopes and affirmations while polls open. (1) While the polls are open, the election judges may compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified and has not yet voted, they shall place the absentee elector's envelope in a box or envelope marked "unopened — checked and valid absentee ballots".

(2) If the absentee ballot does not meet the requirements specified in subsection (1), it shall be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection, and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes shall be handled in the same manner as provided for rejected ballots in 13-13-243.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(1) thru (6); amd. Sec. 129, Ch. 571, L. 1979; Sec. 13-13-235, MCA 1979; redes. 13-13-241 by Code Commissioner, 1979.

13-13-242. Procedure for absentee ballots after polls close. (1) After the polls close, the election judges shall complete the procedures required in 13-13-241 for any absentee ballots not examined while the polls were open.

(2) After all unopened ballot envelopes have been examined, the judges shall open the valid absentee ballot envelopes and, without unfolding the ballots or permitting them to be examined, shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs, deposit the stubs and ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted. In a primary election, the unvoted ballots shall be deposited in the unvoted ballot box without being removed from their enclosure envelope.

(3) When the ballot has been voted, the absentee ballot envelope shall be deposited in the ballot box containing the voted ballots and shall be retained and preserved in the manner provided for official ballots.

(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election

administrator, the ballot shall be rejected. The reason for rejection shall be marked on the back of the ballot or ballots and the statement shall be initialed by a majority of the election judges.

History: En. Sec. 130, Ch. 571, L. 1979.

13-13-243. Rejected absentee ballots. (1) The rejected ballots, the applications, and all envelopes shall be enclosed in an envelope and sealed, and the judges shall write on the envelope "rejected ballot(s) of absentee elector" (writing in the elector's name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be marked "voted in person" and initialed by a majority of the election judges.

(3) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.

(4) All rejected ballots shall be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(7) thru (9); amd. Sec. 131, Ch. 571, L. 1979; Sec. 13-13-236, MCA 1979; redes. 13-13-243 by Code Commissioner, 1979; amd. Sec. 4, Ch. 120, L. 1983.

Compiler's Comments

1983 Amendment: In (2), following "voted in person" deleted "on election day" and substituted "must" for "shall" after "13-13-204".

13-13-244. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977; R.C.M. 1947, 23-3715; Sec. 13-16-239, MCA 1979; redes. 13-13-244 by Code Commissioner.

Part 3

Challenges

13-13-301. Challenges on election day. (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) An individual offering to vote may be orally challenged by any elector of the county upon the following grounds:

(a) that he is not the individual whose name appears on the register;

(b) that he does not reside at the residence listed unless the elector is voting under the provisions of 13-2-512 and 13-2-514;

(c) that he is of unsound mind, as determined by a court;

(d) that he has voted before in that election; or

(e) that he has been convicted of a felony and is serving a sentence in a penal institution.

History: (1)En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2)En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Challenges prior to election, 13-2-404.

Challenges in school elections, 20-20-303.

Definition of felony, 45-2-101.

Developmentally disabled individuals, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-13-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 27, Init. Act, Nov. 1912; re-en. Sec. 10792, R.C.M. 1921; re-en. Sec. 10792, R.C.M. 1935; Sec. 94-1446, R.C.M. 1947; redes. 23-4746 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 45, Ch. 334, L. 1977; R.C.M. 1947, 23-4746.

13-13-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(2).

13-13-304. Duties of election judges in response to challenges. The election judges shall:

(1) test the qualifications of the elector challenged under oath if he applies to vote;

(2) compare the answers of the elector with the entries in the precinct register; and

(3) not permit him to vote if the elector:

(a) is found to be disqualified because the answers given do not correspond to the entry in the precinct register or any transfer form or registration form submitted by the elector;

(b) is disqualified for any cause under the law;

(c) refuses to be sworn and to answer questions touching the matter of residence; or

(d) refuses to take an oath or affirmation as to his qualifications.

History: Ap. p. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; Ap. p. Sec. 114, Ch. 368, L. 1969; Sec. 23-3614, R.C.M. 1947; R.C.M. 1947, 23-3015(4), 23-3614; amd. Sec. 134, Ch. 571, L. 1979.

Cross-References

Oath to test voter qualifications, 13-13-306.

13-13-305. Election judges' powers concerning challenges. The election judges may require the challenged elector to produce one or more electors of the county to be examined under oath as to the qualifications of the challenged elector and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(5).

13-13-306. Proceedings pursuant to challenges — oaths. (1) If the challenge is on the ground that the individual is not the elector whose name appears on the official register, the election judges shall administer the following oath: "I, ... (name of elector), do swear (or affirm) that I am the individual whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the individual does not reside at the residence listed, the judges shall administer this oath: "I, ... (name

of elector), do swear (or affirm) that I reside at ...... (state precise address), which is the address listed on the official register."

(3) If the challenge is on the ground that the individual has voted before in that election, the judges shall administer this oath: "I, ... (name of elector), do swear (or affirm) that I have not voted before in this election."

(4) If the challenge is on the ground that the individual has been convicted of a felony and is serving a sentence in a penal institution, the judges shall administer the following oath: "I, ... (name of elector), do swear (or affirm) either that I have not been convicted of a felony or that, if I have been convicted of a felony, I am not serving a sentence in a penal institution."

(5) The election judges may administer any other oath relating to the individual's qualification to vote that they feel necessary.

History: En. Sec. 112, Ch. 368, L. 1969; amd. Sec. 34, Ch. 365, L. 1977; R.C.M. 1947, 23-3612; amd. Sec. 135, Ch. 571, L. 1979.

Cross-References

Duty to administer oaths, 13-13-304.

Criminal provisions relating to illegal voting, 13-35-210.

Oath for challenges at school elections, 20-20-303.

13-13-307. Determination of challenges. Challenges are determined in favor of the individual challenged by his taking the oath tendered.

History: En. Sec. 113, Ch. 368, L. 1969; amd. Sec. 35, Ch. 365, L. 1977; R.C.M. 1947, 23-3613; amd. Sec. 136, Ch. 571, L. 1979.

13-13-308. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 115, Ch. 368, L. 1969; R.C.M. 1947, 23-3615.

13-13-309. Proceedings after determination of challenge. If the challenge is determined against the individual offering to vote, the individual may not be allowed to receive a ballot or vote by any other means and the precinct register shall be so marked. If determined in favor of the individual offering to vote, he shall be allowed to vote.

History: En. Sec. 116, Ch. 368, L. 1969; R.C.M. 1947, 23-3616; amd. Sec. 137, Ch. 571, L. 1979.

13-13-310. List of challenges to be kept. The election judges shall keep a list showing:

(1) the names of all individuals challenged;

(2) the name of the elector or judge offering the challenge, if known;

(3) the grounds of each challenge;

(4) the determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969; R.C.M. 1947, 23-3617; amd. Sec. 138, Ch. 571, L. 1979.

13-13-311. Vote by challenged elector. (1) Whenever an individual's right to vote at an election is challenged under 13-2-404 or 13-13-301 and the challenge has been determined in favor of the individual challenged as provided in 13-13-307, an election judge shall write in the pollbook at the end of the individual's name the words "challenged and sworn", with the name of the challenger, if known. The elector so challenged shall vote by paper ballot. The election judge shall then write upon the back of the ballot offered by the challenged elector the number of his ballot. The ballot may be cast out if it appears to the court to have been for any reason wrongfully or illegally voted.

(2) Placing information on a ballot or pollbook under provision of subsection (1) or divulging such information in a legal proceeding subsequent to the election does not constitute a violation of 13-35-202 or 13-35-207.

History: En. Sec. 133, Ch. 571, L. 1979.

Cross-References

Criminal provisions relating to illegal voting, 13-35-210.

CHAPTER 14

NONPARTISAN ELECTIONS

Part 1 — General Provisions

Section
13-14-101 through 13-14-104. Repealed.
13-14-105 through 13-14-110 reserved.
13-14-111. Application of general laws.
13-14-112. Declarations for nomination — fee.
13-14-113. Filing for offices without salary or fees.
13-14-114. Register of candidates.
13-14-115. Preparation and distribution of nonpartisan primary ballots.
13-14-116. Counting and canvassing of nonpartisan ballots.
13-14-117. Placing names on ballots for general election.
13-14-118. Vacancies among nominees after nomination and before general election.

Part 2 — Judicial Offices

13-14-201 through 13-14-208. Repealed.
13-14-209 and 13-14-210 reserved.
13-14-211. Judicial offices separate and independent offices for election purposes.
13-14-212. Form of ballot on retention of certain incumbent judicial officers.
13-14-213. Form of ballot on retention for other judicial offices.

Chapter Cross-References

Election of Supreme Court Justices, Title 3, ch. 2, part 1.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in county office, 7-4-2206.

Definitions applicable to this chapter, 13-1-101.

Part 1

General Provisions

Part Cross-References

Election of officials of commission-manager government, 7-3-4341.

13-14-101 through 13-14-104. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-14-101. (1), (2)En. Sec. 225, Ch. 368, L. 1969; Sec. 23-4501, R.C.M. 1947; (3)En. Sec. 230, Ch. 368, L. 1969; Sec. 23-4506, R.C.M. 1947; R.C.M. 1947, 23-4501, 23-4506(3).

13-14-102. En. Sec. 226, Ch. 368, L. 1969; R.C.M. 1947, 23-4502.

13-14-103. En. Sec. 227, Ch. 368, L. 1969; R.C.M. 1947, 23-4503.

13-14-104. En. Sec. 228, Ch. 368, L. 1969; R.C.M. 1947, 23-4504.

13-14-105 through 13-14-110 reserved.

13-14-111. Application of general laws. Candidates for nonpartisan offices, including judicial offices, shall be nominated and elected according to the provisions of this title except as otherwise provided in this chapter.

History: **En. Sec. 139, Ch. 571, L. 1979.**

13-14-112. Declarations for nomination — fee. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113.

(2) Declarations may not indicate political affiliation. The candidate may not state in his declaration any principles or measures he advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position he seeks.

(4) Declarations shall be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing shall be the same as provided in 13-10-201.

History: **En. Sec. 140, Ch. 571, L. 1979.**

Cross-References

Declaration for nomination for primary election, 13-10-201.

Filing fees, 13-10-202.

13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which no salary or fees are paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but in no case may it be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election shall be determined by the secretary of state.

(4) Petitions for nomination shall be filed at the same time provided in 13-10-201 for other candidates and offices.

History: **En. Sec. 141, Ch. 571, L. 1979.**

Cross-References

Election of urban transportation district board, 7-14-214.

Election of board of trustees of fire district, 7-33-2106.

Election of board of trustees for hospital district, 7-34-2116.

Declaration of nomination, 13-10-201.

13-14-114. Register of candidates. On receipt of a declaration or petition, the secretary of state or election administrator shall make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

History: **En. Sec. 142, Ch. 571, L. 1979.**

Cross-References

Primary elections and nominations — register of candidates, 13-10-205.

13-14-115. Preparation and distribution of nonpartisan primary ballots. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". They shall be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished shall be the same as other primary ballots.

(3) In a political subdivision with a population of 10,000 or less, the governing body may determine that a primary need not be held if:

(a) the number of candidates for an office exceeds twice the number to be elected to that office in no more than one-half of the offices on the ballot;

(b) the number of candidates in excess of twice the number to be elected is not more than one for any office on the ballot; and

(c) the governing body passes a resolution not more than 7 days after the close of filing by candidates for election stating that a primary election need not be held.

History: **(1), (2)En. Sec. 143, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 359, L. 1979.**

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of primary ballots, 13-10-209.

13-14-116. Counting and canvassing of nonpartisan ballots. (1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person.

(2) Nonpartisan ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns shall be made as provided by law.

History: **En. Sec. 144, Ch. 571, L. 1979.**

Cross-References

Disposition of ballots, 13-1-303, 13-15-205.

Election returns, 13-15-101.

13-14-117. Placing names on ballots for general election. Candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

History: **En. Sec. 145, Ch. 571, L. 1979.**

13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 50 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office shall be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) shall be certified and printed on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 50 days before the general election and no qualified individual is elected to the office at the general election, the office shall be vacant and shall be filled as provided by law.

History: **En. Sec. 146, Ch. 571, L. 1979.**

Part 2

Judicial Offices

Part Cross-References

Selection of judicial officers, Art. VII, sec. 8, Mont. Const.

Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.

Resignation of judges required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.

Election of Justices of the Peace, 3-10-201.

Unlawful for political party to endorse judicial candidate, 13-35-231.

Public campaign finances for Supreme Court elections, Title 13, ch. 37, part 3.

13-14-201 through 13-14-208. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-14-201. En. Sec. 229, Ch. 368, L. 1969; R.C.M. 1947, 23-4505.

13-14-202. En. Sec. 230, Ch. 368, L. 1969; R.C.M. 1947, 23-4506(1), (2).

13-14-203. En. Sec. 231, Ch. 368, L. 1969; R.C.M. 1947, 23-4507.

13-14-204. En. Sec. 232, Ch. 368, L. 1969; R.C.M. 1947, 23-4508.

13-14-205. En. Sec. 233, Ch. 368, L. 1969; R.C.M. 1947, 23-4509.

13-14-206. En. Sec. 234, Ch. 368, L. 1969; R.C.M. 1947, 23-4510.

13-14-207. En. Sec. 1, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.1.

13-14-208. En. Sec. 2, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.2.

13-14-209 and 13-14-210 reserved.

13-14-211. Judicial offices separate and independent offices for election purposes. (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district which has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county which has more than one justice of the peace is a separate and independent office for election purposes.

History: **En. Sec. 147, Ch. 571, L. 1979.**

Cross-References

Vacancies on Supreme and District Court, Title 3, ch. 1, part 10.

Justice of the Peace as separate and independent office, 3-10-201.

13-14-212. Form of ballot on retention of certain incumbent judicial officers. In the event there is no candidate other than the incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)

History: En. Sec. 148, Ch. 571, L. 1979.

Cross-References

Justices of the Peace elected in same manner as District Court Judge, 3-10-201.

13-14-213. Form of ballot on retention for other judicial offices. The election administrator or secretary of state shall use the form prescribed in 13-14-212 to place the name of an unopposed incumbent for a judicial office on the general election ballot if such office is subject to the provisions of Article VII, Section 8, of The Constitution of the State of Montana.

History: En. Sec. 149, Ch. 571, L. 1979.

CHAPTER 15

CANVASSING, RETURNS, AND CERTIFICATES

Part 1 — General Provisions

Section

13-15-101. Votes to be publicly counted upon closing of polls.
13-15-102. Defect in form of returns to be disregarded.
13-15-103. Counting board.
13-15-104. Counting board for absentee ballots.
13-15-105. Notices relating to counting board for absentee ballots.

Part 2 — Procedure for Canvass

13-15-201. Preparation for count.
13-15-202. Counting votes cast — pollbook.
13-15-203. Marking rejected ballots.
13-15-204. Signing and certifying pollbook.
13-15-205. Items to be delivered to election administrator by election judges — disposition of other items.

Part 3 — Registrar's Duties

13-15-301. Disposition of items by election administrator.

13-15-302. Repealed.

Part 4 — County Canvass

13-15-401. County governing body as board of county canvassers.
13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass.
13-15-403. Canvass to be public — nonessentials to be disregarded.
13-15-404. Information to be entered on record.
13-15-405. Declaration or certification of results.
13-15-406. Certificates to be issued by the election administrator.

Part 5 — State Canvass

13-15-501. Certification of canvass to state canvassers.
13-15-502. Composition and meeting of board of state canvassers.
13-15-503. Notification if returns not received from counties.
13-15-504. Governor to issue commissions.
13-15-505. Canvass to be public — procedure.
13-15-506. Report of the canvass.
13-15-507. Declaration, proclamation, and certification of results.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal acts relating to canvassing, returns, and certificates, Title 13, ch. 35.

Part 1

General Provisions

13-15-101. Votes to be publicly counted upon closing of polls. (1) When the polls are closed, the election judges shall immediately count the votes. The count shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the polling place and return a copy to the election administrator. Both forms shall be signed by all the election judges completing the count.

History: En. Secs. 88, 171, Ch. 368, L. 1969; R.C.M. 1947, 23-3505, 23-4001; amd. Sec. 151, L. 1979.

Cross-References

Disposition of return form, 13-15-205.

13-15-102. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969; R.C.M. 1947, 23-4019.

13-15-103. Counting board. (1) In any precinct where a counting board has been appointed in addition to the regular board of election judges, the counting board shall meet at a place designated by the election administrator.

(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall be sequestered in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The board shall continue counting until the votes cast for all candidates and issues are counted. The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers.

(3) The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).

(4) In a county where voting devices are used, the election administrator may make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls. The ballots may be processed and counted as they are received, but the results of this early count may not be released to the public until after all the polls are closed.

(5) No election judge or other individual having access to the information may disclose any results of early counting while the polls are open.

History: **En. Sec. 150, Ch. 571, L. 1979.**

Cross-References

Appointment of Counting Board, 13-4-101.

Violation of duty as official misconduct, 13-35-204.

13-15-104. Counting board for absentee ballots. (1) The election administrator shall:

(a) give special instructions to any counting board for absentee ballots appointed under 13-4-101 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The counting board for absentee ballots shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-242 and 13-15-103 for the counting of the votes cast.

(3) No election judge or other individual having access to any results of early counting may disclose the information while the polls are open, and he must remain sequestered until the closing of the polls.

(4) (a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ..., will not discuss or disclose or allow anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation.

History: **En. Sec. 5, Ch. 120, L. 1983.**

13-15-105. Notices relating to counting board for absentee ballots. Whenever a counting board for absentee ballots is appointed under 13-4-101, the election administrator shall:

(1) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating that such a method will be used for counting absentee ballots;

(2) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time the counting board for absentee ballots will meet on election day. The notice must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and the counting board is released and must take the oath provided in 13-15-104.

History: **En. Sec. 6, Ch. 120, L. 1983.**

Part 2

Procedure for Canvass

13-15-201. Preparation for count. (1) To begin the count after the close of the polls, the election judges shall take ballots out of the box unopened to determine whether each ballot is single.

(2) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbook.

(3) If they cannot reconcile the total number of ballots with the pollbook they must submit a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. All judges must sign the report.

(4) A ballot which is not endorsed by the official stamp is void and may not be counted unless the judges agree the stamp is missing because of their error. Such ballot shall be marked "unstamped by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: **En. Sec. 172, Ch. 368, L. 1969; R.C.M. 1947, 23-4002; amd. Sec. 152, Ch. 571, L. 1979.**

13-15-202. Counting votes cast — pollbook. (1) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual.

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(4) As the ballots are read, two judges must write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual.

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

(a) the names of all individuals who received votes;

(b) the offices for which they received votes;

(c) total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count.

History: En. Secs. 134, 173, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(3), 23-4003; amd. Sec. 153, Ch. 571, L. 1979.

Cross-References

Presumption of incorrectness raised by failure to comply with this section, 13-16-303.

13-15-203. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges by writing across the face, "rejected on the ground of ....", filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969; R.C.M. 1947, 23-4004.

13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed up, the pollbook shall be signed and certified to by the election judges in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969; R.C.M. 1947, 23-4005; amd. Sec. 154, Ch. 571, L. 1979.

13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope shall be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write his name across all seals.

(5) The return form provided for in 13-15-101 shall be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section shall be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

History: En. Sec. 176, Ch. 368, L. 1969; R.C.M. 1947, 23-4006; amd. Sec. 155, Ch. 571, L. 1979.

Part 3

Registrar's Duties

13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. He shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and the papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

History: En. Sec. 177, Ch. 368, L. 1969; amd. Sec. 1, Ch. 100, L. 1974; R.C.M. 1947, 23-4007; amd. Sec. 156, Ch. 571, L. 1979.

13-15-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 178, Ch. 368, L. 1969; R.C.M. 1947, 23-4008.

Part 4

County Canvass

13-15-401. County governing body as board of county canvassers. (1) The governing body of a county, consolidated, or confederated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days after each election, at 8 a.m., to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, his place shall be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county, consolidated, or confederated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of his office.

History: En. Sec. 179, Ch. 368, L. 1969; R.C.M. 1947, 23-4009; amd. Sec. 157, Ch. 571, L. 1979.

Cross-References

County officers, 7-4-2203.

13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 days after an election, he shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

History: En. Sec. 180, Ch. 368, L. 1969; R.C.M. 1947, 23-4010; amd. Sec. 158, Ch. 571, L. 1979.

13-15-403. Canvass to be public — nonessentials to be disregarded. (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

History: En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977; R.C.M. 1947, 23-4011; amd. Sec. 159, Ch. 571, L. 1979.

13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes.

History: En. Sec. 182, Ch. 368, L. 1969; R.C.M. 1947, 23-4012; amd. Sec. 160, Ch. 571, L. 1979; amd. Sec. 2, Ch. 70, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a) and (1)(d), after "precinct," deleted "municipality,"; and inserted (1)(f).

Cross-References

Election Administrator as secretary of County Board, 13-15-401.

13-15-405. Declaration or certification of results. (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

History: **En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(1), 23-4103(5); amd. Sec. 161, Ch. 571, L. 1979.**

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Recount for tie vote, 13-16-203.

13-15-406. Certificates to be issued by the election administrator. The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

History: **En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977; R.C.M. 1947, 23-4014; amd. Sec. 162, Ch. 571, L. 1979.**

Part 5

State Canvass

13-15-501. Certification of canvass to state canvassers. (1) The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked "election returns".

History: **En. Sec. 185, Ch. 368, L. 1969; amd. Sec. 47, Ch. 365, L. 1977; R.C.M. 1947, 23-4015; amd. Sec. 163, Ch. 571, L. 1979.**

Cross-References

Election Administrator as secretary of County Board, 13-15-401.

Determination of results of ballot issues, 13-27-503.

13-15-502. Composition and meeting of board of state canvassers. Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of his office.

History: **En. Sec. 186, Ch. 368, L. 1969; amd. Sec. 21, Ch. 365, L. 1977; R.C.M. 1947, 23-4016; amd. Sec. 164, Ch. 571, L. 1979.**

Cross-References

Board of Canvassers allocated to office of Secretary of State, 2-15-412.

13-15-503. Notification if returns not received from counties. If the returns from all counties have not been received 3 days before the meeting of the board of state canvassers, the secretary of state shall immediately advise the election administrator of each delinquent county.

History: **En. Sec. 187, Ch. 368, L. 1969; R.C.M. 1947, 23-4017; amd. Sec. 165, Ch. 571, L. 1979.**

13-15-504. Governor to issue commissions. Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: **En. Sec. 188, Ch. 368, L. 1969; R.C.M. 1947, 23-4018; amd. Sec. 169, Ch. 571, L. 1979.**

Cross-References

Certificates issued by Governor in congressional elections, 13-25-204.

13-15-505. Canvass to be public — procedure. (1) The canvass shall be public. It shall proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

History: **En. Sec. 166, Ch. 571, L. 1979.**

13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as votes of other individuals for the same office but shall be identified as write-in votes.

History: **En. Sec. 167, Ch. 571, L. 1979.**

Cross-References

Secretary of State as secretary of State Board, 13-15-502.

13-15-507. Declaration, proclamation, and certification of results. The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

History: **En. Sec. 168, Ch. 571, L. 1979.**

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by the Governor, 2-15-401.

CHAPTER 16

RECOUNTS AND TIE VOTES

Part 1 — County Recount Board

Section

13-16-101. County governing body as county recount board.

Part 2 — Recounts in Close Elections

13-16-201. Conditions under which recount to be made.
13-16-202. Determining total vote cast for all candidates for an office.
13-16-203. Recount for tie votes.
13-16-204. Meeting of recount board when recount requested.
13-16-205. Expenses of recount.
13-16-206 through 13-16-210 reserved.
13-16-211. Recounts allowed if bond posted to cover all costs.

Part 3 — Recounts Under Court Order

13-16-301. Application and court order for recount.
13-16-302. Service of copy of application — hearing.
13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes.
13-16-304. Ordering in another judge — jurisdiction.
13-16-305. Limitation of recount to certain counties or precincts.
13-16-306. Procedure when more than one application for recount.
13-16-307. Expenses of court-ordered recount.

Part 4 — Recount Procedure

13-16-401. Renumbered 13-16-411 by Code Commissioner, 1979.
13-16-402. Renumbered 13-16-412 by Code Commissioner, 1979.
13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.
13-16-404. Renumbered 13-16-418 by Code Commissioner, 1979.
13-16-405. Renumbered 13-16-419 by Code Commissioner, 1979.
13-16-406 through 13-16-410 reserved.
13-16-411. Individuals entitled to appear at recount — opening and recount of ballots.
13-16-412. Procedure for recounting paper ballots.
13-16-413. Recount of votes cast by machine.
13-16-414. Recount of votes cast by voting devices.
13-16-415. Recount totals.
13-16-416. Report of recount.
13-16-417. Sealing ballots, machines, or devices.

13-16-418. Procedure after recount.
13-16-419. Recount by board of state canvassers.

Part 5 — Tie Votes

13-16-501. Tie vote after recount.
13-16-502. Tie vote in election for United States congress.
13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator.
13-16-504. Tie vote in election for state executive officers.
13-16-505. Tie vote in election for county commissioner.
13-16-506. Tie vote in election for other county officers.
13-16-507. Tie vote in election for officers of nonspecified political subdivision.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Part 1

County Recount Board

13-16-101. County governing body as county recount board. (1) The county recount board shall consist of three members.

(2) Three members of the governing body shall be appointed by the chairman if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant place shall be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

History: En. Sec. 203, Ch. 368, L. 1969; R.C.M. 1947, 23-4114; amd. Sec. 170, Ch. 571, L. 1979.

Cross-References

County officers, 7-4-2203.

Expenses of recount, 13-16-205.

Part 2

Recounts in Close Elections

13-16-201. Conditions under which recount to be made. A recount shall be made under any of the following conditions:

(1) If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding ¼ of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the election administrator a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding ¼ of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each election administrator whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(5) If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(6) The secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

History: **En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4103(1) thru (4); amd. Sec. 171, Ch. 571, L. 1979.**

13-16-202. Determining total vote cast for all candidates for an office. When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: **En. Sec. 202, Ch. 368, L. 1969; R.C.M. 1947, 23-4113.**

13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: **En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(2), 23-4103(6); amd. Sec. 172, Ch. 571, L. 1979; amd. Sec. 49, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Rearranged internal reference; made minor change in grammar.

Cross-References

Procedure in case of tie vote, Title 13, ch. 16, part 5.

13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving an application for a recount as provided in

13-16-201(1) or a notice from the secretary of state that an application has been filed with him, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator.

History: **En. Sec. 204, Ch. 368, L. 1969; R.C.M. 1947, 23-4115; amd. Sec. 173, Ch. 571, L. 1979.**

13-16-205. Expenses of recount. The expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

History: **En. Sec. 211, Ch. 368, L. 1969; R.C.M. 1947, 23-4122; amd. Sec. 50, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "Recount expenses" for "Expenses"; substituted "board of state canvassers" for "state board of canvassers".

13-16-206 through 13-16-210 reserved.

13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding ¼ of 1% but not exceeding ½ of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file with the officer with whom his declaration or petition for nomination was filed a petition stating that he believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which he resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

History: **En. Sec. 1, Ch. 395, L. 1979.**

Part 3

Recounts Under Court Order

13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, he shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969; R.C.M. 1947, 23-4101; amd. Sec. 174, Ch. 571, L. 1979.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-16-302. Service of copy of application — hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969; R.C.M. 1947, 23-4110.

13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-202, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

History: En. Sec. 193, Ch. 368, L. 1969; R.C.M. 1947, 23-4104; amd. Sec. 175, Ch. 571, L. 1979.

13-16-304. Ordering in another judge — jurisdiction. (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

History: En. Sec. 194, Ch. 368, L. 1969; R.C.M. 1947, 23-4105; amd. Sec. 176, Ch. 571, L. 1979.

13-16-305. Limitation of recount to certain counties or precincts. (1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

History: En. Secs. 191, 195, Ch. 368, L. 1969; R.C.M. 1947, 23-4102, 23-4106; amd. Sec. 177, Ch. 571, L. 1979.

13-16-306. Procedure when more than one application for recount. If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969; R.C.M. 1947, 23-4108.

13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant shall be returned to him.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

History: En. Sec. 196, Ch. 368, L. 1969; R.C.M. 1947, 23-4107; amd. Sec. 178, Ch. 571, L. 1979.

Part 4

Recount Procedure

13-16-401. Renumbered 13-16-411 by Code Commissioner, 1979.

13-16-402. Renumbered 13-16-412 by Code Commissioner, 1979.

13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.

13-16-404. Renumbered 13-16-418 by Code Commissioner, 1979.

13-16-405. Renumbered 13-16-419 by Code Commissioner, 1979.

13-16-406 through 13-16-410 reserved.

13-16-411. Individuals entitled to appear at recount — opening and recount of ballots. (1) Representatives of the news media may be present at the recount. The recount shall be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(3) If the recount is upon a ballot issue, one qualified elector favoring each side of the question may be present and represent his side.

(4) The recount shall proceed as provided in 13-16-412 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969; R.C.M. 1947, 23-4116(1), (2), (4); amd. Sec. 179, Ch. 571, L. 1979; Sec. 13-16-401, MCA 1979; redes. 13-16-411 by Code Commissioner, 1979.

13-16-412. Procedure for recounting paper ballots. The county recount board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The election administrator shall produce, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all ballots voted in the precinct or precincts.

(2) A member of the county recount board shall open each sealed package or envelope and remove the ballots.

(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each individual in each precinct, at full length, on previously prepared tally sheets. The tally sheets shall show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

History: En. Sec. 198, Ch. 368, L. 1969; R.C.M. 1947, 23-4109; amd. Sec. 180, Ch. 571, L. 1979; Sec. 13-16-402, MCA 1979; redes. 13-16-412 by Code Commissioner, 1979.

13-16-413. Recount of votes cast by machine. The recount board shall remove the seals from the voting machines in all precincts where a recount is required and proceed to record the votes cast for all candidates or on all ballot issues for which the recount is ordered in the same manner as the count is made after the closing of the polls. Any paper ballots voted in the precincts shall be recounted as prescribed in 13-16-412.

History: En. Sec. 181, Ch. 571, L. 1979.

13-16-414. Recount of votes cast by voting devices. (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.

(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls.

History: **En. Sec. 182, Ch. 571, L. 1979; amd. Sec. 51, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "in the same manner provided in 13-16-201 for preelection testing. However, the board shall prepare a new group of preaudited ballots for this test" before the second sentence of (1).

13-16-415. Recount totals. After a recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

History: **En. Sec. 183, Ch. 571, L. 1979.**

13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report which states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

History: **En. Sec. 184, Ch. 571, L. 1979.**

Cross-References

Election Administrator secretary of Recount Board, 13-16-101.

13-16-417. Sealing ballots, machines, or devices. (1) When the recount in a precinct has been finished, each ballot shall again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and shall be delivered to the election administrator for custody.

(2) All voting machines or devices from which seals have been removed shall be resealed in the presence of the election administrator and the recount board and shall be delivered to the election administrator for custody.

(3) All other materials used in the recount that are required to be sealed shall be resealed in the same manner and delivered to the election administrator for custody.

History: **En. Sec. 200, Ch. 368, L. 1969; R.C.M. 1947, 23-4111; amd. Sec. 185, Ch. 571, L. 1979; Sec. 13-16-403, MCA 1979; redes. 13-16-417 by Code Commissioner, 1979.**

13-16-418. Procedure after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the election administrator.

(3) The certificate shall set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate shall adequately designate each precinct recounted; the vote of each precinct according to the official canvass previously made; the nomination, position, or question involved; and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate shall be elected or nominated to the office.

History: Ap. p. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977; Sec. 23-4117, R.C.M. 1947; Ap. p. Sec. 201, Ch. 368, L. 1969; Sec. 23-4112, R.C.M. 1947; R.C.M. 1947, 23-4112, 43-4117; amd. Sec. 186, Ch. 571, L. 1979; Sec. 13-16-404, MCA 1979; redes. 13-16-418 by Code Commissioner, 1979.

13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question, as corrected by the certificates, and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969; R.C.M. 1947, 23-4118; Sec. 13-16-405, MCA 1979; redes. 13-16-419 by Code Commissioner, 1979; amd. Sec. 52, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Changed "state board of canvassers" to "board of state canvassers" in two places.

Cross-References

State Board of Canvassers, Title 13, ch. 15, part 5.

Issuance of certificate, 13-15-507.

Part 5

Tie Votes

13-16-501. Tie vote after recount. (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

History: En. Sec. 208, Ch. 368, L. 1969; R.C.M. 1947, 23-4119; amd. Sec. 187, Ch. 571, L. 1979.

13-16-502. Tie vote in election for United States congress. If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(1); amd. Sec. 188, Ch. 571, L. 1979.

Cross-References

"Special election" defined, 13-1-101.

Notice of special election, 13-1-108.

13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator. If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(2); amd. Sec. 189, Ch. 571, L. 1979.

13-16-504. Tie vote in election for state executive officers. If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(1), (4); amd. Sec. 190, Ch. 571, L. 1979.

Cross-References

Time of regular legislative session, 5-2-103.

13-16-505. Tie vote in election for county commissioner. If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(3); amd. Sec. 191, Ch. 571, L. 1979.

Cross-References

Vacancy on Board of County Commissioners, 7-4-2106.

13-16-506. Tie vote in election for other county officers. If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(2); amd. Sec. 192, Ch. 571, L. 1979.

Cross-References

Vacancies of county officers, 7-4-2206.

13-16-507. Tie vote in election for officers of nonspecified political subdivision. If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: **En. Sec. 193, Ch. 571, L. 1979.**

Cross-References

Vacancies of officers of political subdivisions generally, Title 7, ch. 4, part 22.

CHAPTER 17

VOTING MACHINES

Part 1 — General Provisions

Section

13-17-101. Secretary of state to approve voting machines and devices.
13-17-102. Use of qualified technicians and advisors.
13-17-103. Required specifications for equipment.
13-17-104. Providing voting machines or devices — payment.
13-17-105. Experimental use of machines or devices.
13-17-106. General election laws to apply.
13-17-107. Secretary of state to prescribe rules.

Part 2 — Preparation For Use of Machines

13-17-201. Election administrator to instruct election judges.
13-17-202. Repealed.
13-17-203. Publication of information concerning machines or devices.
13-17-204. Voting machines or devices to be exhibited.
13-17-205. Repealed.
13-17-206. Arrangement of machine ballot.
13-17-207. Repealed.

Part 3 — Voting Procedure

13-17-301. Placement of equipment — time for use.
13-17-302. Repealed.
13-17-303. Repealed.
13-17-304. Repealed.
13-17-305. Request to use paper ballots.
13-17-306. Use of separate paper ballots for voting on certain candidates or issues.
13-17-307. Repealed.

Part 4 — Vote Count

13-17-401 through 13-17-404. Repealed.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to voting machines, 13-35-205, 13-35-206.

Use of voting machines in school elections, 20-20-421.

Part 1

General Provisions

13-17-101. Secretary of state to approve voting machines and devices. (1) Before any voting machine or device can be used for any election in this state, the secretary of state shall:

(a) examine the machine or device to determine if it complies with the requirements of this chapter;

(b) within 30 days after examining a machine or device, file a report of the examination in his office;

(c) include in the report the reasons for approval or disapproval of the use of the machine or device and his opinion of the economic and procedural impact of the use of the machine or device by the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to the election administrator of each county a copy of the report.

(2) Voting machines and devices may not be used unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(1), (2); amd. Sec. 194, Ch. 571, L. 1979.

Cross-References

Definition of "voting machine or device", 13-1-101.

13-17-102. Use of qualified technicians and advisors. (1) The secretary of state may employ and compensate qualified technicians and advisors who are electors of this state to assist him in duties required by 13-17-101. Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.

(2) The person or company submitting a machine or device for examination shall pay the compensation and expenses of technicians and advisors connected with the examination to the secretary of state for deposit in the state general fund. The secretary of state and the person or company shall reach agreement on the number of technicians and advisors to be compensated before the examination is held.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(3), (4); amd. Sec. 195, Ch. 571, L. 1979.

13-17-103. Required specifications for equipment. A voting machine or device may not be approved unless:

(1) an elector can vote in secrecy;

(2) an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote;

(3) an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election;

(4) an elector can vote a split ticket in a general election if he desires;

(5) every valid vote cast is registered and recorded;

(6) the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue;

(7) it allows write-in voting; and

(8) a guarantee to provide training and assistance to election officials will be included in each contract for purchase of the machine or device.

History: En. Sec. 143, Ch. 368, L. 1969; R.C.M. 1947, 23-3802(1), (3); amd. Sec. 196, Ch. 571, L. 1979.

Cross-References

Secret ballot required, Art. IV, sec. 1, Mont. Const.

13-17-104. Providing voting machines or devices — payment. (1) The county governing body may provide approved voting machines or devices as practicable.

(2) Funds for voting machines or devices may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting machines or devices or the question of which type of voting machine or device to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

History: En. Sec. 144, Ch. 368, L. 1969; R.C.M. 1947, 23-3803; amd. Sec. 197, Ch. 571, L. 1979.

Cross-References

Referral of question to voters, 7-5-132.

13-17-105. Experimental use of machines or devices. The governing body of a county may provide for the experimental use at an election of a voting machine or device that has been approved by the secretary of state in one or more precincts without a formal adoption or purchase of the machine or device. Its use at the election is valid for all purposes as if the equipment had been formally adopted or purchased.

History: En. Sec. 158, Ch. 368, L. 1969; R.C.M. 1947, 23-3817; amd. Sec. 198, Ch. 571, L. 1979.

13-17-106. General election laws to apply. All laws applicable to elections where voting is not done by machine or device and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines or devices are used if they are not in conflict with the provisions of this chapter.

History: En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977; R.C.M. 1947, 23-3822; amd. Sec. 199, Ch. 571, L. 1979.

13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting machines and devices for examination and additional requirements for approval of machines and devices.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting machine or device now approved for use in this state and for each type of machine or device approved for use under the provisions of this chapter.

History: En. Sec. 200, Ch. 571, L. 1979.

Part 2

Preparation For Use of Machines

13-17-201. Election administrator to instruct election judges. (1) Before each election, the election administrator shall instruct all election judges in the use of the machines or devices. He shall give to each election judge who has received instruction and is fully qualified to conduct an election with the machine a certificate to that effect.

(2) A chief election judge may not serve in a precinct where voting machines or devices are used unless he has received instruction, is fully qualified to perform duties in connection with the machine or device, and has received a certificate to that effect from the election administrator.

History: En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977; R.C.M. 1947, 23-3807; amd. Sec. 201, Ch. 571, L. 1979.

13-17-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 151, Ch. 368, L. 1969; R.C.M. 1947, 23-3810.

13-17-203. Publication of information concerning machines or devices. Not more than 10 or less than 3 days before an election at which voting machines or devices will be used, the election administrator shall publish on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county:

(1) a diagram showing the voting machine or device and ballot arrangement (in newspaper only);

(2) a statement of the locations where voting machines or devices are on public exhibition;

(3) illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969; R.C.M. 1947, 23-3808; amd. Sec. 202, Ch. 571, L. 1979.

13-17-204. Voting machines or devices to be exhibited. A voting machine or device shall be on exhibition in the office of the election administrator of counties where such equipment is used and may be exhibited at other locations. The election administrator shall demonstrate the voting machine or device to any inquiring elector.

History: En. Sec. 150, Ch. 368, L. 1969; R.C.M. 1947, 23-3809; amd. Sec. 203, Ch. 571, L. 1979.

13-17-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804(1), (7).

13-17-206. Arrangement of machine ballot. The order and arrangement of ballots to be used with voting machines or devices shall be the same as paper ballots insofar as possible and shall be prescribed by the secretary of state before each election.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804; amd. Sec. 204, Ch. 571, L. 1979.

Cross-References

Order and arrangement of paper ballots, Title 13, ch. 12, part 2.

13-17-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 152, Ch. 368, L. 1969; R.C.M. 1947, 23-3811.

Part 3

Voting Procedure

13-17-301. Placement of equipment — time for use. (1) The exterior of the voting machines or devices or the booths in which they are placed and every part of the polling place shall be in plain view of the election judges.

(2) An elector may not remain within the voting machine or device booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

History: En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(1); amd. Sec. 205, Ch. 571, L. 1979.

Cross-References

Coercion or undue influence of voters, 13-35-218.

13-17-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(2).

13-17-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 153, Ch. 368, L. 1969; amd. Sec. 43, Ch. 334, L. 1977; R.C.M. 1947, 23-3812.

13-17-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(1).

13-17-305. Request to use paper ballots. Where voting machines or devices are used, an elector may request to vote by paper ballot instead of using the machine or device. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(2); amd. Sec. 206, Ch. 571, L. 1979.

Cross-References

Counting of ballots, Title 13, ch. 15.

13-17-306. Use of separate paper ballots for voting on certain candidates or issues. Whenever a voting machine or device does not allow proper lockout or does not allow adequate space for the candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

History: En. Sec. 160, Ch. 368, L. 1969; R.C.M. 1947, 23-3819; amd. Sec. 207, Ch. 571, L. 1979.

13-17-307. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 146, Ch. 368, L. 1969; R.C.M. 1947, 23-3805.

Part 4

Vote Count

13-17-401 through 13-17-404. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments
Histories of Repealed Sections:
13-17-401. En. Sec. 154, Ch. 368, L. 1969; R.C.M. 1947, 23-3813.
13-17-402. En. Sec. 155, Ch. 368, L. 1969; R.C.M. 1947, 23-3814.
13-17-403. En. Sec. 156, Ch. 368, L. 1969; R.C.M. 1947, 23-3815.
13-17-404. En. Sec. 157, Ch. 368, L. 1969; R.C.M. 1947, 23-3816.

CHAPTER 18

ELECTRONIC VOTING SYSTEMS

Chapter Cross-References
Voting devices, Title 13, ch. 17.

Part 1

General Provisions (Sections 13-18-101 through 13-18-106 repealed. Sec. 407, Ch. 571, L. 1979)

Part Compiler's Comments
Histories of Repealed Sections:
13-18-101. En. Sec. 164, Ch. 368, L. 1969; R.C.M. 1947, 23-3901.
13-18-102. En. Sec. 165, Ch. 368, L. 1969; R.C.M. 1947, 23-3902.
13-18-103. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(1), (2).
13-18-104. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(4).
13-18-105. En. Sec. 169, Ch. 368, L. 1969; R.C.M. 1947, 23-3906.
13-18-106. En. Sec. 170, Ch. 368, L. 1969; R.C.M. 1947, 23-3907.

Part 2

Procedure (Sections 13-18-201 through 13-18-210 repealed. Sec. 407, Ch. 571, L. 1979)

Part Compiler's Comments
Histories of Repealed Sections:
13-18-201. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(part).
13-18-202. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(1).
13-18-203. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(2).
13-18-204. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(3).
13-18-205. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(4).
13-18-206. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(5).
13-18-207. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(3).
13-18-208. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(5).
13-18-209. En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; R.C.M. 1947, 23-3905(1), (2).
13-18-210. (1), (3)En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; Sec. 23-3905, R.C.M. 1947; (2)En. Sec. 167, Ch. 368, L. 1969; Sec. 23-3904, R.C.M. 1947; R.C.M. 1947, 23-3904(part), 23-3905(3), (4).

CHAPTERS 19 THROUGH 24

RESERVED

CHAPTER 25

ELECTIONS FOR FEDERAL OFFICE

Part 1 — Presidential Elections

Section
13-25-101. Nomination of electors — ballot.
13-25-102. Election of electors.
13-25-103. Returns — lists of electors elected.
13-25-104. Meeting and voting of electors.
13-25-105. Lists of persons voted for.
13-25-106. Compensation of electors.
13-25-107. Vacancy in office of elector.

Part 2 — Congressional Elections

13-25-201. Election of United States senators and representatives.
13-25-202. Vacancy in office of United States senator.
13-25-203. Vacancy in office of United States representative.
13-25-204. Certificates issued by governor.
13-25-205. Nominations for special election.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Reports of contributions and expenditures required of candidates for federal office, 13-37-225.

Part 1

Presidential Elections

Part Cross-References

Presidential elections, Art. II, sec. 1, U.S. Const.; amend. 12, U.S. Const.

13-25-101. Nomination of electors — ballot. (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state no later than 45 days before the general election, in the manner and number provided by law.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot.

History: En. Sec. 215, Ch. 368, L. 1969; R.C.M. 1947, 23-4302(1) thru (3); amd. Sec. 208, Ch. 571, L. 1979.

Cross-References

Ballot form and uniformity, 13-12-202.

13-25-102. Election of electors. (1) On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors for president and vice president of the United States as are allocated to this state.

(2) The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: (1)En. Sec. 214, Ch. 368, L. 1969; Sec. 23-4301, R.C.M. 1947; (2)En. Sec. 215, Ch. 368, L. 1969; Sec. 23-4302, R.C.M. 1947; R.C.M. 1947, 23-4301, 23-4302(4).

13-25-103. Returns — lists of electors elected. (1) The votes for candidates for president and vice president shall be given, received, returned, and canvassed as the votes are given, returned, and canvassed for candidates for congress.

(2) The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and delivered by the latter to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969; R.C.M. 1947, 23-4303.

13-25-104. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one person for president and one for vice president of the United States.

(3) The electors shall cast their ballots for the persons who received the highest number of votes for president and vice president of the United States, respectively, in the most recently conducted general election in the state of Montana.

History: En. Sec. 217, Ch. 368, L. 1969; R.C.M. 1947, 23-4304; amd. Sec. 1, Ch. 61, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

13-25-105. Lists of persons voted for. The electors shall make lists of the persons voted for as president and vice president; indicate the number of votes for each; and certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969; R.C.M. 1947, 23-4305.

13-25-106. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislature. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969; R.C.M. 1947, 23-4306.

Cross-References

Pay and mileage allowed to Legislators, Title 5, ch. 2, part 3.

13-25-107. Vacancy in office of elector. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969; R.C.M. 1947, 23-4307.

Part 2

Congressional Elections

Part Cross-References

Election to Congress generally, Art. I, sec. 2, U.S. Const.; amend. 17, U.S. Const.

Time, place, and manner of elections, Art. I, sec. 4, U.S. Const.

13-25-201. Election of United States senators and representatives. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor.

History: **En. Sec. 221, Ch. 368, L. 1969; amd. Sec. 51, Ch. 365, L. 1977; R.C.M. 1947, 23-4401.**

13-25-202. Vacancy in office of United States senator. (1) If a vacancy occurs in the office of United States senator, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election.

History: **En. Sec. 222, Ch. 368, L. 1969; amd. Sec. 52, Ch. 365, L. 1977; R.C.M. 1947, 23-4402.**

13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term shall be held within 90 days from the time the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election shall be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

History: **En. 23-4405 by Sec. 53, Ch. 365, L. 1977; R.C.M. 1947, 23-4405; amd. Sec. 209, Ch. 571, L. 1979.**

13-25-204. Certificates issued by governor. Upon receipt of the report of the canvass required by 13-15-507, the governor shall send a certificate of election to each person elected.

History: **En. Sec. 223, Ch. 368, L. 1969; R.C.M. 1947, 23-4403; amd. Sec. 53, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "report of the canvass" for "statement"; substituted "13-15-507" for "[13-15-502]".

13-25-205. Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall be made no later than 50 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the 50th day before the election.

History: **En. Sec. 210, Ch. 571, L. 1979.**

CHAPTER 26

CONVENTION TO RATIFY AMENDMENTS TO UNITED STATES CONSTITUTION

Part 1 — Ratification of Amendments

Section

13-26-101. Convention to be held.
13-26-102. Delegates to constitutional convention.
13-26-103. Nomination of delegates.
13-26-104. Determination of election results.
13-26-105. Ballot form.
13-26-106. Time for convention of delegates.
13-26-107. Operation of the convention.
13-26-108. Compensation of delegates and officers.
13-26-109. Certificate of result — transmission to secretary of state of United States.
13-26-110. Qualifications of petitioners and electors.
13-26-111. Federal acts to supersede state provisions concerning amendments.

Chapter Cross-References

Amendment of United States Constitution, Art. V, U.S. Const.

Definitions applicable to this chapter, 13-1-101.

Part 1

Ratification of Amendments

13-26-101. Convention to be held. If congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: **En. Sec. 236, Ch. 368, L. 1969; R.C.M. 1947, 23-4601.**

13-26-102. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislature. Each district shall have delegates equal to the number of members it is entitled to in the legislature.

(2) Delegates shall be elected at the next primary or general election after congress has proposed the amendment or at a special election called by the governor.

(3) Except as otherwise provided in this chapter, the election shall be in accordance with the laws for the election of members of the legislature.

History: **En. Sec. 237, Ch. 368, L. 1969; R.C.M. 1947, 23-4602.**

Cross-References

Size of Legislature and representation of each district, Art. V, sec. 2 and 14, Mont. Const.; Title 5, ch. 1.

13-26-103. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than 100 voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than 30 days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969; R.C.M. 1947, 23-4603.

13-26-104. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, the total votes cast for all candidates "in favor of" ratification, the votes cast for each candidate "opposed to" ratification, and the total votes cast for all candidates "opposed to" ratification shall be ascertained.

(2) From the side receiving the greater number of votes, those candidates (equal in number to the number of delegates to be elected) receiving the highest number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969; R.C.M. 1947, 23-4604.

13-26-105. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969; R.C.M. 1947, 23-4605.

13-26-106. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a.m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969; R.C.M. 1947, 23-4606.

13-26-107. Operation of the convention. A majority of the total number of delegates constitutes a quorum. The convention:

(1) may choose a president, secretary, and other necessary officers;

(2) may make rules governing the procedure of the convention; and

(3) shall judge the qualifications and election of its members.

History: En. Sec. 243, Ch. 368, L. 1969; R.C.M. 1947, 23-4607.

13-26-108. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislature. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 242, Ch. 368, L. 1969; R.C.M. 1947, 23-4608.

Cross-References

Mileage and per diem provided to Legislators, 5-2-301.

13-26-109. Certificate of result — transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States. A duplicate of the certificate shall be filed with the secretary of state of Montana.

History: En. Sec. 244, Ch. 368, L. 1969; R.C.M. 1947, 23-4609; amd. Sec. 211, Ch. 571, L. 1979.

13-26-110. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by the laws on registration.

History: **En. Sec. 245, Ch. 368, L. 1969; R.C.M. 1947, 23-4610.**

Cross-References

Laws on registration, Title 13, ch. 2.

13-26-111. Federal acts to supersede state provisions concerning amendments. If congress, by resolution or statute, prescribes how the convention shall be constituted and held, this chapter is inoperative, and the convention shall be constituted and held as congress directs. All state officers are directed to take action to constitute the convention as authorized by congress and act as if acting under state statute.

History: **En. Sec. 246, Ch. 368, L. 1969; R.C.M. 1947, 23-4611.**

CHAPTER 27

BALLOT ISSUES

Part 1 — General Provisions

Section
13-27-101. Establishment of initiative and referendum procedures.
13-27-102. Who may petition.
13-27-103. Sufficiency of signature.
13-27-104. Time for filing.
13-27-105. Effective date of initiative and referendum issues.
13-27-106. Violations — penalties.

Part 2 — Form of Petitions

13-27-201. Form of petition generally.
13-27-202. Recommendations — approval of form required.
13-27-203. Numbering of petitions.
13-27-204. Petition for the initiative.
13-27-205. Petition for the referendum.
13-27-206. Petition for initiative for constitutional convention.
13-27-207. Petition for initiative for constitutional amendment.

Part 3 — Submission and Processing of Petitions

13-27-301. Submission of petition sheets.
13-27-302. Certification of signatures.
13-27-303. Verification of signatures by county official — allocating voters following reapportionment.
13-27-304. County official to forward verified sheets.
13-27-305. Retention of copies by county official.
13-27-306. Challenge to signatures by elector of county.
13-27-307. Consideration and tabulation of signatures by secretary of state.
13-27-308. Certification of petition to governor.
13-27-309. Repealed.
13-27-310. Transmittal of issues referred by the legislature and ballot forms to the attorney general.
13-27-311. Publication of proposed constitutional amendments.
13-27-312. Review of petition by attorney general — preparation of statements — fiscal note.
13-27-313. Review of ballot forms by attorney general.
13-27-314. Repealed.
13-27-315. Statements by attorney general on issues referred by legislature.

13-27-316. Court review of attorney general statements.

Part 4 — Voter Information Pamphlets

13-27-401. Voter information pamphlet.
13-27-402. Committees to prepare arguments for and against ballot issues.
13-27-403. Appointment to committee.
13-27-404. Committee chairman.
13-27-405. Committee expenses.
13-27-406. Limitation on length of argument — time of filing.
13-27-407. Rebuttal arguments.
13-27-408. Rejection of improper arguments.
13-27-409. Liability for contents of argument.
13-27-410. Printing and distribution of voter information pamphlet.

Part 5 — Election Procedure

13-27-501. Secretary of state to certify ballot form — abbreviated ballot.
13-27-502. Preparation of ballots by county officials.
13-27-503. Determination of result of election.
13-27-504. Copy of approved issues to be sent to legislative council.

Chapter Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Form for local government initiative and referendum, 7-5-132.

Form of petition calling for election on question of issuing county bonds, 7-7-2224.

Form of petition for creation of urban transportation district, 7-14-204.

Definitions applicable to this chapter, 13-1-101.

Initiative or referendum required to approve nuclear facility, 75-20-201.

Form of ballot to summarize improvements to drainage district assessments, 85-8-624.

Part 1

General Provisions

13-27-101. Establishment of initiative and referendum procedures. The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

History: En. 37-115 by Sec. 1, Ch. 342, L. 1977; R.C.M. 1947, 37-115.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-102. Who may petition. A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part).

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

13-27-103. Sufficiency of signature. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part); amd. Sec. 1, Ch. 494, L. 1979.

13-27-104. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the second Friday of the fourth month prior to the election at which they are to be voted upon by the people.

History: En. 37-125 by Sec. 11, Ch. 342, L. 1977; R.C.M. 1947, 37-125.

Cross-References

Time for filing of petition for initiative, Art. III, sec. 4, Mont. Const.

Time for filing of petition for referendum, Art. III, sec. 5, Mont. Const.

13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, other than a constitutional amendment, approved by the people is effective on October 1 following approval. However, if the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) A constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on July 1 following approval.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election.

History: En. 37-137 by Sec. 23, Ch. 342, L. 1977; R.C.M. 1947, 37-137; amd. Sec. 1, Ch. 73, L. 1981; amd. Sec. 8, Ch. 79, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence of (1), inserted ", other than a constitutional amendment,"; at beginning of (2), deleted "Unless the legislature provides otherwise,"; and in (2), inserted "by initiative or" and substituted "July 1" for "October 1".

1981 Amendment: Changed the effective date of an initiative, constitutional amendment, or referendum from July 1 to October 1 following approval; inserted the however clause in (1).

Cross-References

Suspension by petition, Art. III, sec. 5, Mont. Const.

13-27-106. Violations — penalties. A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. 37-138 by Sec. 24, Ch. 342, L. 1977; R.C.M. 1947, 37-138.

Part 2

Form of Petitions

13-27-201. Form of petition generally. (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 ½ x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative council. If sheets are circulated in sections, the complete text of the measure must be attached to each section.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(1), (2); amd. Sec. 1, Ch. 400, L. 1979.

13-27-202. Recommendations — approval of form required. (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative council for review.

(b) The council staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the council staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider any such recommendations and respond in writing to the council, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative council shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy thereof available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval within 28 days after submission of the petition sheet. The secretary of state shall send written notice if the petition has been rejected, together with reasons for rejection, within 14 days after submission of the petition sheet.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(3); amd. Sec. 2, Ch. 400, L. 1979; amd. Sec. 1, Ch. 488, L. 1981; amd. Sec. 1, Ch. 4, L. 1983.

Compiler's Comments

1983 Amendment: Provided for Legislative Council review before submission of sample sheet to Secretary of State by inserting (1) and (2) and deleting former (1)(b) relating to Legislative Council review after such submission.

1981 Amendment: Inserted "containing the text of the proposed measure" after "sample sheet" in the first sentence of (1) (now (3)); inserted subsection (1)(b) (now deleted).

13-27-203. Numbering of petitions. The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(4).

13-27-204. Petition for the initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

PETITION TO PLACE
INITIATIVE NO.______ ON
THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 19..., general election ballot:

(Title of measure written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: **En. 37-118 by Sec. 4, Ch. 342, L. 1977; R.C.M. 1947, 37-118; amd. Sec. 2, Ch. 488, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted (1)(a) through (1)(c) and (1)(e); changed "a qualified elector of the state" to "a legally registered Montana voter"; deleted "or imprisonment in the state prison for a term not to exceed 10 years"; and made changes in phraseology in (1)(d); deleted language relating to form for petition for initiative.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-205. Petition for the referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.______
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ...... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: **En. 37-119 by Sec. 5, Ch. 342, L. 1977; R.C.M. 1947, 37-119; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 488, L. 1981.**

Compiler's Comments

1981 Amendments — Composite: Chapter 488 inserted subsections(1)(a) through (1)(c) and (1)(e); changed "a qualified elector of the state" to "a legally registered Montana voter"; deleted "or imprisonment in the state prison for a term not to exceed 10 years", and made changes in phraseology in (1)(d); deleted language relating to the form for petition for referendum.

Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

In preparing the composite for this section, the Code Commissioner did not include the language relating to a $50,000 fine as indicated by Ch. 198 because the apparent intent of Ch. 198, sec. 7(3) and (4), was to provide for a fine of $50,000 only where a felony prison term was provided for and Ch. 488 removed the felony prison term of 10 years.

Cross-References

Referendum, Art. III, sec. 5, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

PETITION TO PLACE
INITIATIVE NO._______, CALLING FOR
A CONSTITUTIONAL CONVENTION, ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention the legislature will call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 19..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-120 by Sec. 6, Ch. 342, L. 1977; R.C.M. 1947, 37-120; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 4, Ch. 488, L. 1981.

Compiler's Comments

1981 Amendments — Composite: Chapter 488 inserted (1)(a) through (1)(c) and (1)(e); changed "a qualified elector of the state" to "a legally registered Montana voter"; deleted "or imprisonment in the state prison for a term not to exceed 10 years"; and made changes in phraseology in (1)(d); deleted language relating to the form for initiative petition on the question of calling a constitutional convention.

Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

In preparing the composite for this section, the Code Commissioner did not include the language relating to a $50,000 fine as indicated by Ch. 198 because the apparent intent of Ch. 198, sec. 7(3) and (4), was to provide for a fine of $50,000 only where a felony prison term was provided for and Ch. 488 removed the felony prison term of 10 years.

Cross-References

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for the initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL
AMENDMENT NO.______ ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ...., 19..., general election ballot:

(Title of the proposed contitutional amendment
written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-121 by Sec. 7, Ch. 342, L. 1977; R.C.M. 1947, 37-121; amd. Sec. 5, Ch. 488, L. 1981.

Compiler's Comments

1981 Amendment: Inserted (1)(a) through (1)(c) and (1)(e); changed "a qualified elector of the state" to "a legally registered Montana voter"; deleted "or imprisonment in the state prison for a term not to exceed 10 years"; and made changes in phraseology in (1)(d); deleted language relating to the form of a petition proposing a constitutional amendment by the initiative.

Cross-References

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

Part 3

Submission and Processing of Petitions

13-27-301. Submission of petition sheets. Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than

9 months and no later than 2 weeks before the final date for filing the petition with the secretary of state.

History: **En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(1); amd. Sec. 3, Ch. 400, L. 1979.**

Cross-References

Election Administrator as registration official, 13-1-301.

Date of filing of petitions, 13-27-104.

13-27-302. Certification of signatures. An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

I, (Name of person who circulated this petition), affirm, or being first sworn, depose and say: that I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, are the signatures of Montana electors who are registered at the address following their signature, and that the signers knew the contents of the petition before signing the same.

....

(Signature of petition circulator)

....

(Address of petition circulator)

Subscribed and sworn to before me this .... day of ....., 19...

....

(Person authorized to take oaths)

Seal

....

(Title or notarial information)

History: **En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(2); amd. Sec. 6, Ch. 488, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "are the signatures of Montana electors who are registered at the address following their signature" near the middle of the affirmation; inserted "address of petition circulator" following affirmation; made minor changes in phraseology.

Cross-References

Officers who may administer oaths, 1-6-101.

13-27-303. Verification of signatures by county official — allocating voters following reapportionment. (1) The county official receiving the sheets or sections of a petition shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a ballot issue under the provisions of this chapter following the

filing of a districting and apportionment plan under 5-1-111 and before members of the house of representatives have been elected and qualified under the plan, the legislative representative districts among which the signatures must be allocated must be those in existence when the plan was filed.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(3), (4); amd. Sec. 4, Ch. 400, L. 1979; (2)En. Sec. 1, Ch. 512, L. 1983.

13-27-304. County official to forward verified sheets. The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ......, Secretary of State of the state of Montana:

I, ..., ... (title) of the County of ...., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in Legislative Representative District No. .... (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address and legislative representative district number is completed for each valid signature.

Signed: .... (Date) .... (Signature)
Seal .... (Title)

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(1).

13-27-305. Retention of copies by county official. The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of his office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(2).

13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(5); amd. Sec. 5, Ch. 400, L. 1979.

13-27-307. Consideration and tabulation of signatures by secretary of state. (1) The secretary of state shall consider and tabulate only such signatures on petitions as are certified by the proper county official, and each such certificate is prima facie evidence of the facts stated therein. However, the secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana }
} ss.
County of .... }

I, ... (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify that I am personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition) and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office addresses are correctly stated therein.

....(Names of such electors)

In testimony whereof, I have hereunto set my hand and official seal this .... day of ......, 19...

....(Signature)

Seal ....(Notarial information)

History: En. 37-124 by Sec. 10, Ch. 342, L. 1977; R.C.M. 1947, 37-124; amd. Sec. 212, Ch. 571, L. 1979.

Cross-References

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-308. Certification of petition to governor. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, he shall immediately certify to the governor that the completed petition has been officially filed.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-309. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-310. Transmittal of issues referred by the legislature and ballot forms to the attorney general. (1) The secretary of state shall transmit a copy of the form in which a ballot issue proposed by petition will appear on the ballot to the attorney general on the same day the completed petition is certified to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) If the ballot form is not approved by the attorney general pursuant to 13-27-313, the secretary of state shall immediately submit a new ballot form to the attorney general.

History: **En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(1), (2); amd. Sec. 6, Ch. 400, L. 1979.**

Cross-References

Approval of form required, 13-27-202.

13-27-311. Publication of proposed constitutional amendments. (1) If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall have the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people, in not less than one newspaper of general circulation in each county.

(2) The secretary of state may arrange for newspaper, radio, or television publication of proposed constitutional amendments in each county. A summary of the amendment as provided by the attorney general, as described in 13-27-312 or 13-27-315, would suffice for the publication required by this section and should be made at least twice each month for 2 months previous to the election.

History: **En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973; amd. Sec. 26, Ch. 342, L. 1977; amd. Sec. 6, Ch. 365, L. 1977; R.C.M. 1947, 23-2802; amd. Sec. 213, Ch. 571, L. 1979.**

Cross-References

Amendment by referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

[(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.]

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose prepared pursuant to subsection (1) or (2), unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement if applicable to the secretary of state within 21 days after receipt of the petition by the attorney general.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(3); amd. Sec. 7, Ch. 400, L. 1979; amd. Sec. 1, Ch. 336, L. 1981; amd. Sec. 7, Ch. 488, L. 1981.

Compiler's Comments

1981 Amendments — Composite Section: Chapter 336 inserted the material relating to fiscal liability and a fiscal note after "petition as to form" in the first sentence through the end of the second sentence in (1); inserted subsection (3); and inserted "and the fiscal statement if applicable" after "implication" in (7).

Chapter 488 rewrote subsection (1), adding subsections (1)(a) and (1)(b) to change a requirement that attorney general prepare a statement explaining the purpose of the measure and a separate requirement that he prepare a statement of the implication of a vote for or against a ballot issue to a requirement that the attorney general "seek out parties on both sides of the issue and obtain their advice" and ", if he deems it necessary, appoint a five member committee to recommend the statements" and inserted provisions relating to committee composition and manner of arriving at statements and requisites for statements in (1); inserted present subsections (2) and (4).

In preparation of the composite of the Ch. 336 and Ch. 488 amendments to this section, the Code Commissioner set out in a separate bracketed subsection (3), the amendatory language in Ch. 336 pertaining to the preparation by the attorney general of a fiscal statement although the language had been inserted in former subsection (2), which was entirely deleted by Ch. 488; the language is included because it appears to reflect a separable concept not in conflict with Ch. 488 and the apparent intent was to incorporate the concept into the law. The Code Commissioner omitted from the composite the Ch. 336 amendment to former subsection (2) which raised the restriction in the number of words allowable in a statement of implication prepared by the attorney general from 25 to 50 words because former subsection (2) was entirely deleted by Ch. 488, which is in the nature of a repealer (see 1-2-204) and the increase directly conflicts with the new language of subsection (1)(b), which was added by Ch. 488, specifically designating the number of words allowable. Any inconsistency between the official enrolled bill and the MCA is to be resolved in favor of the official enrolled bill (see 1-11-103).

13-27-313. Review of ballot forms by attorney general. The attorney general shall examine each ballot form submitted to his office pursuant to 13-27-310 and within 20 days of receipt of the ballot form shall notify the secretary of state of his approval or rejection of the ballot form.

If the ballot form is rejected, the attorney general shall approve or reject a new ballot form submitted by the secretary of state pursuant to 13-27-310(3) within 5 days of receiving the new form.

History: **En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(4); amd. Sec. 8, Ch. 400, L. 1979.**

13-27-314. Repealed. Sec. 19, Ch. 400, L. 1979.

History: **En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(5).**

13-27-315. Statements by attorney general on issues referred by legislature. (1) Upon receipt of a copy of a ballot form under 13-27-310(2) for an issue proposed by the legislature, the attorney general shall order a fiscal note as provided in 13-27-312(1) if the issue has an effect on the revenues, expenditures, or the fiscal liability of the state. At the same time the explanatory statement is prepared under subsection (2), the attorney general shall prepare a fiscal statement of no more than 50 words to be forwarded to the secretary of state at the same time as the explanatory statement.

(2) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing a true and impartial explanation of the purpose of the measure in plain, easily understood language. The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.

(3) If statements of the implication of a vote for or against a ballot issue have not been provided by the legislature, the attorney general shall prepare the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form.

History: **En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(6); amd. Sec. 9, Ch. 400, L. 1979; amd. Sec. 2, Ch. 336, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (1).

13-27-316. Court review of attorney general statements. (1) If the proponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of receipt of the notice from the secretary of state provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file

an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(3) (a) Notice shall be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312.

(b) A statement certified by the court shall be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court.

History: En. Sec. 10, Ch. 400, L. 1979; amd. Sec. 3, Ch. 336, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or the fiscal statement" after "statements of implication of a vote" in (1) and (2).

Part 4

Voter Information Pamphlets

13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet shall also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet shall be presented in the same order.

History: Ap. p. Sec. 14, Ch. 342, L. 1977; Sec. 37-128, R.C.M. 1947; Ap. p. Sec. 74, Ch. 365, L. 1977; Sec. 37-111, R.C.M. 1947; R.C.M. 1947, 37-111(1), (2), 37-128(1); amd. Sec. 11, Ch. 400, L. 1979; amd. Sec. 4, Ch. 336, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "fiscal statement if applicable" in (1)(a).

13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this section:

(a) The committee advocating approval of an act referred to the people or a constitutional amendment proposed by the legislature or an act referred to the people by referendum petition shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members.

(b) The committee advocating rejection of a ballot issue referred to the people or proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(c) A three-member committee advocating approval of a ballot issue proposed by any type of initiative petition or advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition shall be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202.

(d) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

(2) No person may be required to serve on any committee under this section.

History: En. 37-128 by Sec. 14, Ch. 342, L. 1977; R.C.M. 1947, 37-128(2); amd. Sec. 214, Ch. 571, L. 1979; amd. Sec. 1, Ch. 549, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

13-27-403. Appointment to committee. (1) Appointments to committees advocating approval or rejection of an act referred to the people or a constitutional amendment proposed by the legislature shall be made no later than 4 months before the election at which the ballot issue will be voted on by the people. All persons responsible for appointing members to such committees shall submit to the secretary of state the names and addresses of three prospective appointees for each position, set forth in the order of preference of appointment, no later than 3 weeks before the deadline for making such appointments.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be made no later than 10 days after the measure is certified to the governor. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of two prospective appointees for each position, set forth in the order of preference of appointment, no later than 2 weeks after the final date for filing the petition in accordance with 13-27-301.

(3) All prospective appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, at least 15 days before the appointment deadline specified in subsection (1). A prospective appointee may assent or decline to serve on the committee by so informing the secretary of state. Lack of response to the secretary of state for any reason 10 days after mailing of notice is considered to be refusal of appointment.

(4) All prospective appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, at least 8 days before the appointment deadline specified in subsection (2). A prospective appointee may assent or decline to serve on the committee by so informing the secretary of state. Lack of response to the secretary of state for any reason 5 days after mailing of notice is considered to be refusal of appointment.

(5) The secretary of state shall determine which of the prospective appointees assenting to serve on the committee shall be appointed, according to the order of preference specified by the appointing authority, and shall so notify all prospective appointees by the appointment deadline specified in subsection (1) or (2), respectively.

History: **En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(1), (2); amd. Sec. 2, Ch. 549, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), in first sentence after "shall be" changed "filed with the secretary of state" to "made" and inserted second sentence; in (2) in first sentence after "shall be" changed "filed with the secretary of state" to "made" and substituted second sentence for former second sentence which read: "At the same time the certification of the sufficiency of a petition is made to the governor, the secretary of state shall notify all persons responsible for appointing members of committees advocating approval or rejection of the issues of the date by which such appointments must be filed in his office"; and inserted (3), (4), and (5).

13-27-404. Committee chairman. The appointee of the president of the senate is the chairman of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a chairman at the time the appointments are made.

History: **En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(3).**

13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $100 for a three-member committee and $200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose.

History: **En. 37-130 by Sec. 16, Ch. 342, L. 1977; R.C.M. 1947, 37-130; amd. Sec. 12, Ch. 400, L. 1979.**

13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and shall be filed, in typewritten form, with the secretary of state no later than 85 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation must approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

History: En. 37-131 by Sec. 17, Ch. 342, L. 1977; R.C.M. 1947, 37-131; amd. Sec. 13, Ch. 400, L. 1979.

13-27-407. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in his office. The committees may prepare rebuttal arguments no longer than 250 words that shall be filed, in typewritten form, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

History: En. 37-132 by Sec. 18, Ch. 342, L. 1977; R.C.M. 1947, 37-132.

13-27-408. Rejection of improper arguments. The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(1).

13-27-409. Liability for contents of argument. Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(2).

Cross-References

Civil liability for libel, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

13-27-410. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition shall include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract shall require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing shall take place no later than 2 weeks after the pamphlets are received from the printer.

(5) Ten copies of the voter information pamphlet shall be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

History: En. 37-134 by Sec. 20, Ch. 342, L. 1977; R.C.M. 1947, 37-134; amd. Sec. 14, Ch. 400, L. 1979.

Cross-References

Election Administrator as registration official, 13-1-301.

Part 5

Election Procedure

13-27-501. Secretary of state to certify ballot form — abbreviated ballot. (1) The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) Except as provided in subsection (4), the secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement if applicable;

(e) the fiscal statement if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition.

(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that he be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which he has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(1); amd. Sec. 15, Ch. 400, L. 1979; amd. Sec. 5, Ch. 336, L. 1981; amd. Sec. 1, Ch. 669, L. 1983; (4)En. Sec. 2, Ch. 669, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "Except as provided in subsection (4)" for "Unless otherwise provided in the legislative act or petition placing the issue on the ballot"; and in (3) inserted "when required to do so" in two places in opening paragraph; inserted (4) that was enacted as a separate section by sec. 2, Ch. 669, L. 1983.

1981 Amendment: Inserted "the fiscal statement if applicable" (now in (2)(e)) before "and the statements of the implication of a vote" in the second sentence (now in (2)(f)).

Cross-References

Title of ballot issue, 13-27-312, 13-27-316.

13-27-502. Preparation of ballots by county officials. Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 13-12-207, 13-12-212, and 13-17-206 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 13-12-207, 13-12-212, and 13-17-206.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(2); amd. Sec. 16, Ch. 400, L. 1979; amd. Sec. 54, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "13-12-207, 13-12-212, and 13-17-206" for "13-12-212, 13-17-205, and 13-17-206, or 13-18-201 through 13-18-206" in two places.

13-27-503. Determination of result of election. The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

History: **En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(1); amd. Sec. 55, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "board of state canvassers" for "state board of canvassers"; made minor change in punctuation.

Cross-References

Procedure for vote counting, Title 13, ch. 15.
Effective date of ballot issues, 13-27-105.

13-27-504. Copy of approved issues to be sent to legislative council. The secretary of state shall send a certified copy of all ballot issues which have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the executive director of the legislative council at the same time he transmits a certified copy of the statement of the canvass to the governor.

History: **En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(2).**

CHAPTERS 28 THROUGH 34

RESERVED

CHAPTER 35

ELECTION AND CAMPAIGN PRACTICES AND CRIMINAL PROVISIONS

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13-35-229. Repealed.
13-35-230. Repealed.
13-35-231. Unlawful for political party to endorse judicial candidate.
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13-35-233. Solicitation of votes on election day.
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Part 3 — Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices.
13-35-302. Candidates to be given opportunity to subscribe to campaign practices code — publicity.

Chapter Cross-References

Montana Recall Act, Title 2, ch. 16, part 6.

Promise of support or opposition at future election by lobbyist, 5-7-102.

Definitions applicable to this chapter, 13-1-101.

Commissioner of Political Practices responsible for investigating alleged violations of ch. 35, 13-37-111.

Prosecution of violations by Commissioner, 13-37-113.

Power of County Attorney to investigate violations of ch. 35, 13-37-125.

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in political matters, 45-7-102.

Limitation on political activities of officer or employee of vocational rehabilitation program, 53-7-107.

Limitation on political activity of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1

General Provisions

13-35-101. Election code not to supersede criminal code — statute of limitations. (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 45-1-205.

History: En. 23-47-101 by Sec. 1, Ch. 334, L. 1977; R.C.M. 1947, 23-47-101.

Cross-References

Montana criminal code, Title 45.

13-35-102. Trivial benefits not covered by criminal provisions. It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

History: En. 23-47-102 by Sec. 2, Ch. 334, L. 1977; R.C.M. 1947, 23-47-102.

Cross-References

Law disregards trifles, 1-3-224.

13-35-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

History: En. 23-47-103 by Sec. 3, Ch. 334, L. 1977; R.C.M. 1947, 23-47-103.

Cross-References

"Knowingly" and "misdemeanor" defined, 45-2-101.

Misdemeanor penalty, 46-18-212.

13-35-104. Attempt as a violation. An attempt, as defined in 45-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 45-4-103.

History: En. 23-47-104 by Sec. 4, Ch. 334, L. 1977; R.C.M. 1947, 23-47-104.

13-35-105. Aiding and abetting. A person who is legally accountable, as provided in 45-2-302, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

History: En. 23-47-105 by Sec. 5, Ch. 334, L. 1977; R.C.M. 1947, 23-47-105.

13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), he shall be removed from nomination or office, as the case may be, even though he was regularly nominated or elected.

History: En. 23-47-106 by Sec. 6, Ch. 334, L. 1977; R.C.M. 1947, 23-47-106; amd. Sec. 215, Ch. 571, L. 1979.

Cross-References

Salaries withheld when title contested, 2-16-202.

Vacancy created by removal, Title 2, ch. 16, part 5.

Definition of "candidate" and "public office", 13-1-101.

Removal for violation of Title 13, ch. 37, 13-37-130.

13-35-107. Voiding election. (1) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held within 60 days of that finding. If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question.

History: En. 23-47-107 by Sec. 7, Ch. 334, L. 1977; R.C.M. 1947, 23-47-107; amd. Sec. 216, Ch. 571, L. 1979.

Cross-References

Vacancy created by declaring election void, 2-16-501.

Procedure for filling vacancies on general election ballot, 13-10-327.

13-35-108. Powers of district court. In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

History: En. 23-47-108 by Sec. 8, Ch. 334, L. 1977; R.C.M. 1947, 23-47-108.

Cross-References

Injunctions, Title 27, ch. 19.

Part 2

Specific Provisions

Part Cross-References

Ineligibility to hold public office because of conviction, 13-35-106.

Voiding election under certain circumstances, 13-35-107.

13-35-201. Electors and ballots. (1) An elector may not show the contents of his ballot to anyone after it is marked. No elector may place any mark upon the ballot by which it may be identified as the one voted by him.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. No person other than an election judge may deliver a ballot to an elector.

(3) No person may solicit an elector to show his ballot after it is marked.

(4) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to an election judge.

History: En. 23-47-109 by Sec. 9, Ch. 334, L. 1977; R.C.M. 1947, 23-47-109.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-202. Conduct of election officials and election judges. An election officer or judge of an election may not:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or

(6) make a false statement in a certificate regarding affirmation.

History: **En. 23-47-110 by Sec. 10, Ch. 334, L. 1977; R.C.M. 1947, 23-47-110; amd. Sec. 217, Ch. 571, L. 1979.**

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Warning notice to be posted at polling place, 13-13-113.

Indicating challenged elector not a violation, 13-13-311.

Violation as misdemeanor, 13-35-103.

13-35-203. Interference with officials. A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

History: **En. 23-47-111 by Sec. 11, Ch. 334, L. 1977; R.C.M. 1947, 23-47-111.**

13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

History: **En. 23-47-112 by Sec. 12, Ch. 334, L. 1977; R.C.M. 1947, 23-47-112.**

13-35-205. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of nomination which has been filed;

(2) purposely causes the vote on a machine to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after the same has been deposited in the ballot box or adds any ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(5) causes any name to be placed on the registry lists other than in the manner provided by this title; or

(6) changes a poll list or checklist.

History: **En. 23-47-113 by Sec. 13, Ch. 334, L. 1977; R.C.M. 1947, 23-47-113.**

Cross-References

Declaration for nomination, 13-10-201.

Certificates of nomination or election, 13-15-406, 13-15-504.

13-35-206. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces the cards printed for the instruction of the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, checklists, ballots, or ballot boxes for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting machine;

(8) mutilates, injures, or destroys any ballot or appliance used in connection with a voting machine; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination.

History: En. 23-47-114 by Sec. 14, Ch. 334, L. 1977; R.C.M. 1947, 23-47-114.

Cross-References

Posting of election lists and instruction cards, 13-13-112.

Warning notice to be posted at polling place, 13-13-113.

13-35-207. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law.

History: En. 23-47-115 by Sec. 15, Ch. 334, L. 1977; R.C.M. 1947, 23-47-115; amd. Sec. 218, Ch. 571, L. 1979.

Cross-References
Declaration for nomination, 13-10-201.
Indicating challenged elector not a violation, 13-13-311.
Criminal provisions relating to signing ballot issues, 13-27-106.

13-35-208. Deceiving an elector. A person who deceives an elector voting under 13-13-118 or 13-13-119 is guilty of a misdemeanor.

History: En. 23-47-116 by Sec. 16, Ch. 334, L. 1977; R.C.M. 1947, 23-47-116; amd. Sec. 56, Ch. 575, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "13-13-118 or 13-13-119" for "[13-13-108 or 13-17-303]".

Cross-References
Misdemeanor penalty, 46-18-212.

13-35-209. Fraudulent registration. (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

History: En. 23-47-117 by Sec. 17, Ch. 334, L. 1977; R.C.M. 1947, 23-47-117.

Cross-References
Registration, Title 13, ch. 2.
Violation as misdemeanor, 13-35-103.

13-35-210. Limits on voting rights. (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

History: En. 23-47-118 by Sec. 18, Ch. 334, L. 1977; R.C.M. 1947, 23-47-118.

Cross-References
Qualifications of voter, 13-1-111.
Violation as misdemeanor, 13-35-103.

13-35-211. Electioneering. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

History: En. 23-47-119 by Sec. 19, Ch. 334, L. 1977; R.C.M. 1947, 23-47-119; amd. Sec. 219, Ch. 571, L. 1979.

Cross-References
Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.

13-35-212. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-120 by Sec. 20, Ch. 334, L. 1977; R.C.M. 1947, 23-47-120.

13-35-213. Preventing public meetings of electors. (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

History: En. 23-47-121 by Sec. 21, Ch. 334, L. 1977; R.C.M. 1947, 23-47-121.

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-214. Illegal influence of voters. No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

History: En. 23-47-122 by Sec. 22, Ch. 334, L. 1977; R.C.M. 1947, 23-47-122.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-215. Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person in his behalf, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

History: En. 23-47-123 by Sec. 23, Ch. 334, L. 1977; R.C.M. 1947, 23-47-123; amd. Sec. 220, Ch. 571, L. 1979.

Cross-References

Violation as misdemeanor, 13-35-103.

13-35-216. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-124 by Sec. 24, Ch. 334, L. 1977; R.C.M. 1947, 23-47-124.

13-35-217. Officers not to influence voter. No officer, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire.

History: En. 23-47-125 by Sec. 25, Ch. 334, L. 1977; R.C.M. 1947, 23-47-125; amd. Sec. 57, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or clerk of election" after "officer".

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-218. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

History: En. 23-47-126 by Sec. 26, Ch. 334, L. 1977; R.C.M. 1947, 23-47-126; amd. Sec. 1, Ch. 561, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "on election day" after "No person" at the beginning of (5); added the language beginning with "or engage in . . ." at the end of (5).

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-219. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. 23-47-127 by Sec. 27, Ch. 334, L. 1977; R.C.M. 1947, 23-47-127.**

13-35-220. Bribing members of political gatherings. (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 45-7-101(3).
History: **En. 23-47-128 by Sec. 28, Ch. 334, L. 1977; R.C.M. 1947, 23-47-128.**

Cross-References
Definition of "bribe", 1-1-207.

13-35-221. Improper nominations. (1) No person may pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing him to be or to refrain from or to cease being a candidate, and no person may solicit or receive any payment or promise from another for such purpose.

(2) No person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may:

(a) allow himself to be nominated or refuse to allow himself to be nominated as a candidate at an election;

(b) become, by himself or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if he has been so nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person thereon as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) his candidacy for the nomination is not in good faith.
History: **En. 23-47-129 by Sec. 29, Ch. 334, L. 1977; R.C.M. 1947, 23-47-129.**

Cross-References
Violation as misdemeanor, 13-35-103.

13-35-222. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. 23-47-130 by Sec. 30, Ch. 334, L. 1977; R.C.M. 1947, 23-47-130.**

13-35-223. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. 23-47-131 by Sec. 31, Ch. 334, L. 1977; R.C.M. 1947, 23-47-131.**

13-35-224. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. 23-47-132 by Sec. 32, Ch. 334, L. 1977; R.C.M. 1947, 23-47-132.**

13-35-225. Election materials not to be anonymous. (1) Whenever any person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, such communication shall clearly and conspicuously state the name and address of the printer, if printed commercially, and the name and address of the person who made or financed the expenditure for the communication; including, in the case of a political committee, the name and address of the treasurer.

(2) If any document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included or if necessary information is inadvertently omitted, the person financing the communication shall file a copy of the article with the commissioner, together with the required information.

History: **En. 23-47-133 by Sec. 33, Ch. 334, L. 1977; R.C.M. 1947, 23-47-133; amd. Sec. 221, Ch. 571, L. 1979.**

Cross-References

Violation as misdemeanor, 13-35-103.

Liability in civil action for violation, 13-37-128.

13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

History: **En. 23-47-134 by Sec. 34, Ch. 334, L. 1977; R.C.M. 1947, 23-47-134; amd. Sec. 222, Ch. 571, L. 1979; amd. Sec. 1, Ch. 655, L. 1983.**

Compiler's Comments

1983 Amendment: In (2), near beginning, after "employee to" substituted present language for "give money, service, or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office"; and in (3) near beginning after "solicit" substituted "support for or opposition to" for "any money, influence, service, or other thing of value or otherwise aid or promote" and near middle after "public office" inserted "or the passage of a ballot issue".

13-35-227. Prohibited contributions from corporations. (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

History: **En. Sec. 25, Init. Act, Nov. 1912; re-en. Sec. 10790, R.C.M. 1921; re-en. Sec. 10790, R.C.M. 1935; Sec. 94-1444, R.C.M. 1947; redes. 23-4744 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 1, Ch. 296, L. 1975; R.C.M. 1947, 23-4744; amd. Sec. 1, Ch. 404, L. 1979.**

Cross-References

Civil liability for violation, 13-37-128.

13-35-228. Prohibition of salary increase contribution. A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

History: **En. 23-47-135 by Sec. 35, Ch. 334, L. 1977; R.C.M. 1947, 23-47-135.**

Cross-References

Violation as misdemeanor, 13-35-103.

Civil liability for violation, 13-37-128.

13-35-229. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. 23-47-136 by Sec. 36, Ch. 334, L. 1977; R.C.M. 1947, 23-47-136.**

13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. 23-47-137 by Sec. 37, Ch. 334, L. 1977; R.C.M. 1947, 23-47-137.**

13-35-231. Unlawful for political party to endorse judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.

History: **En. 23-47-138 by Sec. 38, Ch. 334, L. 1977; R.C.M. 1947, 23-47-138; amd. Sec. 223, Ch. 571, L. 1979.**

Cross-References

Elections for Justice of the Peace, 3-10-201.

Violation as misdemeanor, 13-35-103.

13-35-232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. 23-47-139 by Sec. 39, Ch. 334, L. 1977; R.C.M. 1947, 23-47-139.**

13-35-233. Solicitation of votes on election day. (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation.

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed $1,000, or both.

History: **En. Sec. 1, Ch. 539, L. 1979.**

13-35-234. Political criminal libel — misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

History: **En. Sec. 2, Ch. 539, L. 1979; amd. Sec. 1, Ch. 545, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), in first sentence after "morality" inserted clause from "or to" to end of sentence; and in second sentence after "statement" inserted "or representation".

Cross-References

Misdemeanor penalty, 46-18-212.

Part 3

Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: **En. Sec. 1, Ch. 475, L. 1979.**

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code — publicity. (1) The commissioner of campaign practices shall prepare a form which contains the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form shall be sent for each election as soon as feasible. The signed form shall be returned to the commissioner.

(3) The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms. Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner, the secretary of state, a county registrar, or a city or town clerk and may sign the form and deliver it to the commissioner.

History: **En. Sec. 2, Ch. 475, L. 1979.**

CHAPTER 36

CONTESTS

Part 1 — General Provisions

Section

13-36-101. Grounds for contest of nomination or election to public office.
13-36-102. Time for commencing contest.
13-36-103. Court having jurisdiction of proceedings.
13-36-104. Nomination contests.

Part 2 — Procedure

13-36-201. Contents of contest petition.
13-36-202. Reception of illegal votes — allegations and evidence.
13-36-203. Form of complaint.
13-36-204. Bond required.
13-36-205. Recovery of costs.
13-36-206. Notice of filing — prompt hearing.
13-36-207. Hearing of contest.
13-36-208. Advancement of cases — dismissal — privileges of witnesses.

13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate.
13-36-210. Punishment.
13-36-211. When nomination or election not to be vacated.
13-36-212. Declaration of result of election after rejection of illegal votes.

Chapter Cross-References

Salaries withheld during election contests, 2-16-202.

Challenges to local government bond elections, 7-7-105.

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Commissioner of Political Practices to investigate alleged violations of ch. 36, 13-37-111.

Prosecution of violations of ch. 36 by Commissioner of Political Practices, 13-37-113.

Powers of County Attorney to investigate violations of ch. 36, 13-37-125.

Part 1

General Provisions

13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote, for any of the following causes:

(1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;

(2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;

(3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes.

History: En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R.C.M. 1921; re-en. Sec. 10810, R.C.M. 1935; Sec. 94-1464, R.C.M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977; R.C.M. 1947, 23-4763; amd. Sec. 224, Ch. 571, L. 1979.

Cross-References

Definition of "elector" and "public office", 13-1-101.

Ineligibility to hold office because of conviction, 13-35-106.

When nomination or election not to be vacated, 13-36-211.

13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which such offense was committed.

History: (1)En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; Sec. 23-3316, R.C.M. 1947; (2)En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R.C.M. 1921; re-en. Sec. 10805, R.C.M. 1935; Sec. 94-1459, R.C.M. 1947; redes. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch.

365, L. 1977; Sec. 23-4759, R.C.M. 1947; R.C.M. 1947, 23-3316(1) thru (3), 23-4759; amd. Sec. 225, Ch. 571, L. 1979; amd. Sec. 58, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (2), substituted "day of election" for "return day of the election".

Cross-References

Certification of nomination, 13-15-406, 13-15-507.

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R.C.M. 1921; re-en. Sec. 10806, R.C.M. 1935; Sec. 94-1460, R.C.M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977; R.C.M. 1947, 23-4760; amd. Sec. 226, Ch. 571, L. 1979.

13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; R.C.M. 1947, 23-3316(4) thru (6).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Procedure

13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested and the grounds of the contest. The petition shall not thereafter be amended, except by leave of the court.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

Cross-References

Grounds for contest, 13-36-101.

13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other candidate for the same office. No testimony shall be received of any illegal votes unless the party contesting such election delivers to the opposite party, at least 3 days before such trial, a written list of the number of illegal votes (and by whom given) which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement if he did not know and by reasonable diligence was unable to learn of such additional illegal votes (and by whom they were given) before delivering such written list.

History: En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R.C.M. 1921; re-en. Sec. 10812, R.C.M. 1935; Sec. 94-1466, R.C.M. 1947; redes. 23-4765 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4765; amd. Sec. 227, Ch. 571, L. 1979.

13-36-203. Form of complaint. (1) A petition or complaint filed under the provisions of this chapter shall be sufficient if it is substantially in the following form:

In the District Court of the
.... Judicial District,
for the County of ...., State of Montana.

A B (or A B and C D), Contestants,
vs.
E F, Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., A. D. 19.., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at said election, and the board of canvassers has returned the said .... as being duly nominated (or elected) at said election.

That contestant A B voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C D (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said .... was not duly nominated (or elected), and that said election was void or that said A B or C D, as the case may be, was duly nominated (or elected), and for such other and further relief as to the court may seem just and legal in the premises.

(2) Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

History: **En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R.C.M. 1921; re-en. Sec. 10818, R.C.M. 1935; Sec. 94-1472, R.C.M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4771.**

Cross-References

Verification of pleadings, 25-4-203.

13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in such sum as the court may order, not exceeding $2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail.

History: **En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).**

13-36-205. Recovery of costs. In any contest, the prevailing party may recover his costs, disbursements, and reasonable attorney's fees. Costs, disbursements, and attorney's fees in all such cases shall be in the discretion of the court. In case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond.

History: **En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 228, Ch. 571, L. 1979.**

Cross-References

Costs, Title 25, ch. 10.

13-36-206. Notice of filing — prompt hearing. On the filing of any such petition, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing him to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

History: **En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).**

13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition and no person other than the parties and their attorneys may be heard thereon except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, except that the judge may in his discretion impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 13-36-212, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office.

History: En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R.C.M. 1921; re-en. Sec. 10814, R.C.M. 1935; Sec. 94-1468, R.C.M. 1947; redes. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977; R.C.M. 1947, 23-4767; amd. Sec. 229, Ch. 571, L. 1979.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.

Vacancies in local government offices, 7-4-2206.

Vacancy after primary and prior to general election, 13-10-327.

13-36-208. Advancement of cases — dismissal — privileges of witnesses. Proceedings under this title shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition may be dismissed without the consent of the county attorney unless the same is dismissed by the court. No person may be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person or any evidence that is the direct result of such evidence or information that he may have so given may be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony.

History: En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R.C.M. 1921; re-en. Sec. 10817, R.C.M. 1935; Sec. 94-1471, R.C.M. 1947; redes. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977; R.C.M. 1947, 23-4770.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office.

History: En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R.C.M. 1921; re-en. Sec. 10803, R.C.M. 1935; Sec. 94-1457, R.C.M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977; R.C.M. 1947, 23-4757.

13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it appears that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exceptions to this judgment shall be those provided in 13-36-209. Such judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

History: En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R.C.M. 1921; re-en. Sec. 10804, R.C.M. 1935; Sec. 94-1458, R.C.M. 1947; redes. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977; R.C.M. 1947, 23-4758.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.

Vacancies in local government offices, 7-4-2206.

Vacancy after primary and prior to general election, 13-10-327.

13-36-211. When nomination or election not to be vacated. Nothing in the ground of contest specified in 13-36-101(3) is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear either:

(1) that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

History: En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R.C.M. 1921; re-en. Sec. 10811, R.C.M. 1935; Sec. 94-1465, R.C.M. 1947; redes. 23-4764 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4764.

13-36-212. Declaration of result of election after rejection of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

History: En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R.C.M. 1921; re-en. Sec. 10809, R.C.M. 1935; Sec. 94-1463, R.C.M. 1947; redes. 23-4762 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4762.

CHAPTER 37

CONTROL OF CAMPAIGN PRACTICES

Part 1 — Commissioner of Political Practices

Section
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Chapter Cross-References

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Part 1

Commissioner of Political Practices

13-37-101. Commissioner of political practices. In this chapter, "commissioner" means the commissioner of political practices created by 13-37-102, unless the context clearly indicates otherwise.

History: En. 23-4796 by Sec. 3, Ch. 365, L. 1977; R.C.M. 1947, 23-4796.

13-37-102. Creation of office. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for his consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner of political practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The sufficiency of such causes shall be subject to judicial review.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(1), (5); amd. Sec. 1, Ch. 483, L. 1979.

Cross-References

Attached to office of Secretary of State for administrative purposes, 2-15-411.

13-37-103. Term of office — limitations on holding other office. (1) The individual selected to serve as the commissioner of political practices is appointed for a 6-year term, but he is thereafter ineligible to serve as the commissioner of political practices.

(2) The individual selected to serve as commissioner of political practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that he leaves office as commissioner.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(2); amd. Sec. 2, Ch. 483, L. 1979.

13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the position of commissioner, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Every nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1).

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(3); amd. Sec. 4, Ch. 483, L. 1979.

13-37-105. Impeachment and prosecution of commissioner. The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(4).

13-37-106. Salary. (1) The commissioner of political practices is entitled to receive a salary of $26,269 in fiscal year 1984 and $26,794 after June 30, 1984.

(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature.

History: En. Sec. 3, Ch. 483, L. 1979; amd. Sec. 4, Ch. 605, L. 1981; amd. Sec. 3, Ch. 656, L. 1983.

Compiler's Comments

1983 Amendment: In (1), increased the salary of the Commissioner of Political Practices from that authorized in fiscal year 1982 and fiscal years after 1982, $23,794 and $25,754, to $26,269 in fiscal year 1984 and $26,794 in fiscal years after 1984.

1981 Amendment: In (1), substituted "a salary of $23,794 in fiscal year 1982 and $25,754 after June 30, 1982" for "an annual salary of $22,000".

Cross-References

Salary Commission, Title 2, ch. 16, part 4.

13-37-107 through 13-37-110 reserved.

13-37-111. Investigative powers and duties. (1) The commissioner of political practices shall be responsible for investigating all of the alleged violations of the election laws contained in chapters 35, 36, or 37 of this title and shall in conjunction with the county attorneys be responsible for enforcing these election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of chapters 35, 36, or 37 of this title and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapters 35, 36, or 37 of this title. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of chapters 35, 36, or 37 of this title or any rule adopted pursuant thereto.

(3) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title

which are held by any political committee or candidate, so long as such inspection is made during reasonable office hours.

(4) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(1), (13), (17), (21); amd. Sec. 230, Ch. 571, L. 1979.

13-37-112. Personnel and budget. (1) The commissioner shall select an appropriate staff to enforce the provisions of chapters 35, 36, or 37 of this title, and he may hire and fire all personnel under his supervision.

(2) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(2), (16); amd. Sec. 231, Ch. 571, L. 1979.

Cross-References

Attached to office of Secretary of State for administrative purposes, 2-15-411.

13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapters 35, 36, or 37 of this title. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-37-124 and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapters 35, 36, or 37 of this title. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapters 35, 36, or 37 of this title;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapters 35, 36, or 37 of this title are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapters 35, 36, or 37 of this title; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(3); amd. Sec. 232, Ch. 571, L. 1979.

Cross-References

Consultation with County Attorney, 13-37-124.

Powers of County Attorney to investigate, 13-37-125.

13-37-114. Rules. The commissioner shall promulgate and publish rules to carry out the provisions of chapters 35, 36, or 37 of this title and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(14); amd. Sec. 233, Ch. 571, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

13-37-115. Orders of noncompliance. The commissioner may issue orders of noncompliance as prescribed by 13-37-121.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(18).

13-37-116. Exercise of powers. The commissioner may exercise all of the powers conferred upon him by law in any jurisdiction or political subdivision of the state.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(19).

13-37-117. Commissioner to provide forms and manuals. (1) The commissioner shall prescribe forms for statements and other information required to be filed pursuant to chapters 35, 36, or 37 of this title and furnish forms and appropriate information to persons required to file statements and information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file statements pursuant to chapters 35, 36, or 37 of this title.

(3) The commissioner shall prescribe the manner in which the county clerk and recorders shall receive, file, collate, and maintain reports filed with them under chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(4), (5), (7); amd. Sec. 234, Ch. 571, L. 1979.

13-37-118. Information voluntarily supplied. The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(6); amd. Sec. 235, Ch. 571, L. 1979.

13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(2) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and such other reports as he considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports.

History: (1) thru (4)En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; Sec. 23-4786, R.C.M. 1947; (Former (5))En. 23-4789 by Sec. 14, Ch. 480, L. 1975; Sec. 23-4789, R.C.M. 1947; R.C.M. 1947, 23-4786(8) through (12), 23-4789; amd. Sec. 236, Ch. 571, L. 1979.

13-37-120. Reports. The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed. The commissioner shall also make further reports on the matters within his jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(15), (20); amd. Sec. 237, Ch. 571, L. 1979.

13-37-121. Inspection of statements and reports — issuance of orders of noncompliance. (1) Each statement and report filed with the commissioner during an election or within 60 days thereafter shall be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed by a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

(2) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(3) If an order of noncompliance is issued during any period other than that described in subsection (2), a candidate or political committee shall submit the necessary information within 10 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(1) thru (3); amd. Sec. 238, Ch. 571, L. 1979.

Cross-References

Authority to issue order of noncompliance, 13-37-115.

13-37-122. Judicial review of orders of noncompliance. A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section shall be expeditiously reviewed by the appropriate district court.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(4).

13-37-123. Examination of reports after election. Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of this chapter to determine whether the statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of this chapter. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this chapter or the alleged failure to report any contribution or expenditure required to be reported pursuant to this chapter.

History: **En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(5); amd. Sec. 239, Ch. 571, L. 1979.**

13-37-124. Consultation and cooperation with county attorney. (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapters 35, 36, or 37 of this title.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund.

History: **En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(1) thru (4); amd. Sec. 240, Ch. 571, L. 1979.**

13-37-125. Powers of county attorney to investigate. (1) Nothing in chapters 35, 36, or 37 of this title prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(5), (6); amd. Sec. 241, Ch. 571, L. 1979.

13-37-126. Names not to be printed on ballot. (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot.

History: En. 23-4791 by Sec. 16, Ch. 480, L. 1975; R.C.M. 1947, 23-4791; amd. Sec. 242, Ch. 571, L. 1979.

Cross-References

Vacancy prior to primary election, 13-10-326.

Vacancy after primary and prior to general election, 13-10-327.

13-37-127. Withholding of certificates of nomination or election. (1) A certificate of election shall not be granted to any candidate until he or his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or his treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued.

History: En. 23-4792 by Sec. 17, Ch. 480, L. 1975; R.C.M. 1947, 23-4792; amd. Sec. 243, Ch. 571, L. 1979.

Cross-References

Certificates issued by Election Administrator, 13-15-406.

Governor to issue commissions, 13-15-504.

13-37-128. Cause of action created. (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or

three times the amount of the unlawful contribution or expenditure, whichever is greater.

History: **En. Sec. 244, Ch. 571, L. 1979.**

13-37-129. Liability and disposition of fines. In determining the amount of liability under 13-37-128, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner, the entire amount recovered shall be paid to the general fund of the state.

History: **En. Sec. 245, Ch. 571, L. 1979.**

13-37-130. Limitation of action. No action may be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts which give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 shall be the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter, except as provided in 13-37-306. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36.

History: **En. Sec. 246, Ch. 571, L. 1979.**

Part 2

Campaign Finance

Part Cross-References

Civil penalties for violation of chapter, 13-37-128.

13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which shall include an organizational statement and set forth the name and address of all other officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee shall be filed with the commissioner and the appropriate county clerk and recorder as specified for the filing of reports in 13-37-225.

History: **En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(1); amd. Sec. 247, Ch. 571, L. 1979.**

13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the chairman of the political committee, in the case of a political committee. The written authorization shall be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208.

History: **En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(2), (4); amd. Sec. 248, Ch. 571, L. 1979.**

Cross-References

Definition of "candidate" and "political committee", 13-1-101.

13-37-203. Qualifications of campaign and deputy campaign treasurers. Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

History: **En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(3).**

Cross-References

Registered voter, Title 13, ch. 2.

13-37-204. Removal of campaign and deputy campaign treasurers. A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201.

History: **En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(5).**

13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to 13-37-201. Nothing in this section shall prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize his regular or personal account in the depository as a campaign account.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(6); amd. Sec. 249, Ch. 571, L. 1979; amd. Sec. 1, Ch. 98, L. 1981.

Compiler's Comments

1981 Amendment: In the middle of the section, substituted "Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository." for "Only a bank authorized to transact business in Montana may be designated as a campaign depository."

13-37-206. Exception for certain school districts. The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

(1) a first-class district located in a county having a population of less than 15,000;

(2) a second- or third-class district; or

(3) a county high school district having a student enrollment of less than 2,000.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(7); amd. Sec. 250, Ch. 571, L. 1979.

13-37-207. Deposit of contributions — statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records.

History: En. 23-4782 by Sec. 7, Ch. 480, L. 1975; R.C.M. 1947, 23-4782; amd. Sec. 2, Ch. 98, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "share draft account, share checking account, or negotiable order of withdrawal account" after "in a checking account" near the end of (1).

13-37-208. Treasurer to keep records. (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts (current within not more than 10 days after the date of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226) of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter.

(2) Accounts of a deputy campaign treasurer shall be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(1), (3); amd. Sec 251, Ch. 571, L. 1979.

13-37-209. Inspection of records. Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(2).

13-37-210 through 13-37-214 reserved.

13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), $100 per week; and

(b) for all other candidates and political committees, $20 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, and other necessities in an amount of less than $10. Petty cash shall not be used for the purchase of time, space, or services from any communications medium.

History: En. 23-4784 by Sec. 9, Ch. 480, L. 1975; R.C.M. 1947, 23-4784; amd. Sec. 252, Ch. 571, L. 1979.

13-37-216. Limitations on contributions. (1) Aggregate contributions for all elections in a campaign by an individual, other than the candidate, to a candidate and political committees organized on his behalf are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $1,500;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $750;

(c) for a candidate for public service commissioner, district court judge, or state senator, not to exceed $400; and

(d) for a candidate for any other public office, not to exceed $250.

(2) For the purposes of this subsection, an independent committee means a committee which is not specifically organized on behalf of a particular candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $8,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $2,000;

(c) for a candidate for public service commissioner, not to exceed $1,000;

(d) for a candidate for the state senate, not to exceed $600;

(e) for a candidate for any other public office, not to exceed $300.

(3) The limitations imposed by this section do not apply to public funds contributed to a candidate under part 3 of this chapter.

History: **En. 23-4795 by Sec. 1, Ch. 481, L. 1975; amd. Sec. 67, Ch. 365, L. 1977; R.C.M. 1947, 23-4795; amd. Sec. 253, Ch. 571, L. 1979.**

Cross-References

Definition of "contribution", 13-1-101.

Corporations prohibited from making contributions, 13-35-227.

13-37-217. Contributions in name of undisclosed principal. No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished.

History: **En. Sec. 18, Init. Act, Nov. 1912; re-en. Sec. 10783, R.C.M. 1921; re-en. Sec. 10783, R.C.M. 1935; Sec. 94-1437, R.C.M. 1947; redes. 23-4737 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 54, Ch. 365, L. 1977; R.C.M. 1947, 23-4737; amd. Sec. 254, Ch. 571, L. 1979.**

Cross-References

Corporations prohibited from making contributions, 13-35-227.

13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to his campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to his campaign. The foregoing limitations shall be multiplied by the inflation factor as defined in 15-30-101(8) for the year in which general elections are held after 1984; the resulting figure shall be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

History: **En. Sec. 1, Ch. 529, L. 1983.**

13-37-219 through 13-37-224 reserved.

13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the county clerk and recorder of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the county clerk and recorder of the county in which the election is to be held or, if the election is to be held in more than one county, with the clerk and recorder in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

History: **En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(1), (2); amd. Sec. 255, Ch. 571, L. 1979.**

Cross-References

Definition of "contribution" and "expenditure", 13-1-101.

13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees which are specifically organized to support or oppose a particular statewide candidate or issue shall file reports:

(a) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Candidates for a state district office, including but not limited to candidates for the legislature, public service commission, or district court judge, and political committees which are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 15th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files his or its closing report as specified in 13-37-228(3).

(3) Candidates for any other public office and political committees which are specifically organized to support or oppose a particular local issue shall be required to file the reports specified in subsection (2) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(4) For the purposes of this subsection, a committee which is not specifically organized to support or oppose a particular candidate or ballot issue and which receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(5) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(6) All reports required by this section shall be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and subsections (1) through (5) of this section.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(3) thru (6); amd. Sec. 256, Ch. 571, L. 1979.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

13-37-227. Comprehensive report when several candidates or issues involved. The commissioner shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(7); amd. Sec. 257, Ch. 571, L. 1979.

13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 shall be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a

person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (4) of 13-37-226.

(2) Subsequent periodic reports shall cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (4).

(3) Closing reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which he or it participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election.

History: **En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(8); amd. Sec. 258, Ch. 571, L. 1979.**

13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made aggregate contributions, other than loans, of $25 or more to the candidate or political committee (including the purchase of tickets and other items for events such as dinners, luncheons, rallies, and similar fund-raising events), together with the aggregate amount of those contributions within the reporting period and the total amount of contributions made by that person;

(3) the total sum of individual contributions made to or for the political committee or candidate and not reported under subsection (2) of this section;

(4) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(5) each loan from any person during the reporting period, together with the full names and mailing addresses (occupation and principal place of business, if any) of the lender and endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed to a political committee or candidates, in the form prescribed by the commissioner;

(7) an itemized account of proceeds which total less than $25 from a person from mass collections made at fund-raising events;

(8) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (7) of this section during the reporting period;

(9) the total sum of all receipts received by or for the committee or candidate during the reporting period;

(10) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

History: **En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(1) through (9), (part (16)).**

13-37-230. Disclosure of expenditures made. Each report required by this chapter shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

(1) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(2) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(3) the total sum of expenditures made by a political committee or candidate during the reporting period;

(4) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(5) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner;

(7) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

History: **En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(10) through (16).**

13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee shall be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: **En. 23-4780 by Sec. 5, Ch. 480, L. 1975; R.C.M. 1947, 23-4780; amd. Sec. 260, Ch. 571, L. 1979.**

Cross-References

Oaths and affirmations, Title 1, ch. 6.

Part 3

Public Campaign Finance

13-37-301. Short title. This part may be cited as "The Public Campaign Fund Act".

History: **En. 23-4901 by Sec. 1, Ch. 263, L. 1974; amd. Sec. 1, Ch. 538, L. 1977; R.C.M. 1947, 23-4901.**

13-37-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Fund" means the election campaign fund established in 13-37-304.

(2) "Political party" is a party whose candidate for governor in the last general election received 5% or more of the total votes cast for that office as verified by the secretary of state.

(3) "Department" means the department of revenue provided for in Title 2, chapter 15, part 13.

(4) "Candidate" means an individual who has been nominated by a political party for election to the office of governor-lieutenant governor or has been nominated in the nonpartisan primary election for the office of chief justice or justice of the supreme court in this state.

(5) "Individual" means a natural person.

History: En. 23-4902 by Sec. 2, Ch. 263, L. 1974; amd. Sec. 2, Ch. 538, L. 1977; R.C.M. 1947, 23-4902; amd. Sec. 1, Ch. 579, L. 1979.

13-37-303. Donation by taxpayer. (1) An individual whose withheld income tax or payment of estimated tax exceeds by more than $1 his income tax liability for the taxable year may donate $1 to be paid to the fund. In the case of a joint return, as provided in 15-30-142, of a husband and wife having an income tax overpayment as defined in 15-30-149 of $2 or more, each spouse may donate $1 be paid to the fund.

(2) An individual with an unpaid tax liability may at the time of payment donate an extra $1 to be paid to the fund.

(3) The department shall provide a place on the face of the blank form of return, provided for in 15-30-144, where an individual may make the donations provided for in subsections (1) and (2). The form shall adequately explain the individual's option to donate $1 to the fund.

History: En. 23-4903 by Sec. 3, Ch. 263, L. 1974; R.C.M. 1947, 23-4903; amd. Sec. 2, Ch. 579, L. 1979.

13-37-304. Public campaign fund. (1) There is a public campaign fund within the state special revenue fund provided for in 17-2-102.

(2) All money designated under 13-37-303 shall be deposited in the fund.

(3) (a) Five months before the general election in the election year, money in the fund shall be paid over in equal amounts to all eligible candidates for the designated political office according to the percentages in (3)(b). The money shall be spent only for the legitimate campaign expenses of the candidates.

(b) The money shall be distributed in the following percentages:

(i) campaign for office of governor-lieutenant governor, 50%;

(ii) campaigns for offices of chief justice and justice of the supreme court, 50% equally allocated to each eligible campaign fund.

(4) Three months before the general election in a general election year the remainder of any money in the fund shall be remitted to the treasurer of each candidate in the same proportion as provided in subsection (3)(b).

History: En. 23-4904 by Sec. 4, Ch. 263, L. 1974; amd. Sec. 3, Ch. 538, L. 1977; R.C.M. 1947, 23-4904; amd. Sec. 3, Ch. 579, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

13-37-305. Records to be kept — availability. (1) The treasurer of each political party shall maintain a complete record of all disbursements of funds received by him under 13-37-304 and used for the candidate's campaign expenses plus receipts or other evidence of each expense.

(2) The record shall be available for inspection by anyone at any reasonable time. A copy shall be deposited in the office of the secretary of state by December 31 of each general election year.

History: En. 23-4905 by Sec. 5, Ch. 263, L. 1974; R.C.M. 1947, 23-4905.

13-37-306. Penalties for violation. The use of money from the fund by anyone for any purpose other than the legitimate campaign expenses of a candidate for a designated public office is an offense and is punishable by imprisonment for not more than 1 year, by a fine of not more than $5,000, or by both.

History: En. 23-4906 by Sec. 6, Ch. 263, L. 1974; amd. Sec. 4, Ch. 538, L. 1977; R.C.M. 1947, 23-4906.

13-37-307. Application to receive money. All candidates who wish to receive money from the fund must notify the department on a form prescribed and supplied by the department. Acceptance of money from the fund is voluntary.

History: En. Sec. 5, Ch. 579, L. 1979.

13-37-308. Unopposed candidates ineligible. In a campaign where the candidate is unopposed, including campaigns for chief justice or justice of the supreme court, the candidate may not receive any campaign funds.

History: En. Sec. 4, Ch. 579, L. 1979.

CHAPTER 38

POLITICAL PARTIES

Part 1 — General Provisions

Section

13-38-101. Powers of parties.
13-38-102. Repealed.
13-38-103. Division of motor vehicles to submit new-voter lists to major political parties.
13-38-104. Party rules to be filed with secretary of state.
13-38-105. County committee rules to be filed with election administrator.

Part 2 — Committee Structure

13-38-201. Election of committeemen at primary.
13-38-202. Committeemen as party representatives — county and city central committees.
13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists.
13-38-204. Committees to fill vacancies among nominees under certain circumstances.
13-38-205. Organization and operation of committee.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Nominations by political parties, Title 13, ch. 10, parts 4 through 6.

Unlawful for political parties to endorse judicial candidate, 13-35-231.

Part 1

General Provisions

13-38-101. Powers of parties. Each political party shall have power to:

(1) make its own rules;

(2) provide for and select its own offices;

(3) call conventions and provide for the number and qualification of delegates;

(4) adopt platforms;

(5) provide for selection of delegates to national conventions;

(6) provide for the nomination of presidential electors;

(7) provide for the selection of national committeemen and women;

(8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where such vacancies are caused by death, resignation, or removal from the electoral district;

(9) perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969; R.C.M. 1947, 23-3406.

Cross-References

Presidential electors, 13-25-101.

13-38-102. Repealed. Sec. 1, Ch. 513, L. 1981.

History: En. Sec. 83, Ch. 368, L. 1969; R.C.M. 1947, 23-3407.

13-38-103. Division of motor vehicles to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the division of motor vehicles, department of justice, shall submit to the chairman of each major political party of the state four copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the division of motor vehicles shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; amd. Sec. 1, Ch. 257, L. 1971; amd. Sec. 1, Ch. 132, L. 1973; R.C.M. 1947, 23-3001.

Cross-References

Exemptions from prohibition against distribution of lists, 2-6-109.

13-38-104. Party rules to be filed with secretary of state. The state central committee of each political party in this state must file a current copy of the rules of government of the party with the secretary of state.

History: En. Sec. 261, Ch. 571, L. 1979.

13-38-105. County committee rules to be filed with election administrator. The county committee of each political party of this state must file a current copy of its rules of government with the election administrator.

History: En. Sec. 262, Ch. 571, L. 1979.

Cross-References
County Clerk and Recorder as Election Administrator, 13-1-301.

Part 2

Committee Structure

13-38-201. Election of committeemen at primary. (1) Each political party shall elect at each primary election one man and one woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: **En. Sec. 72, Ch. 368, L. 1969; R.C.M. 1947, 23-3401.**

Cross-References
Rules for determining residence in general, 1-1-215.
Definition of "registrar", 13-1-101.
Registered voter, Title 13, ch. 2.
Declaration of nomination, 13-10-201.

13-38-202. Committeemen as party representatives — county and city central committees. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of 2 years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: **En. Sec. 73, Ch. 368, L. 1969; R.C.M. 1947, 23-3402.**

13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of whom shall be a man and one of whom shall be a woman, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969; amd. Sec. 25, Ch. 365, L. 1977; R.C.M. 1947, 23-3403.

13-38-204. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969; R.C.M. 1947, 23-3404.

Cross-References

Filling of vacancy in Legislature, 5-2-403.

Filling vacancy in office of State Senate, 5-2-406.

Filling vacancy on Board of County Commissioners, 7-4-2106.

Filling vacancy in county office, 7-4-2206.

13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one or more vice-chairmen. The chairman or first vice-chairman shall be a woman. The committee shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The chairman of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy may be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973; amd. Sec. 26, Ch. 365, L. 1977; R.C.M. 1947, 23-3405.

TITLE 14

RESERVED

TITLE 15

TAXATION

Ch.
1. Tax Administration.
2. State Tax Appeal Board.
Chapters 3 through 5 reserved.
6. Property Subject to Taxation.
7. Appraisal.
8. Assessment Procedure.
9. Equalization.
10. Property Tax Levies.
Chapters 11 through 14 reserved.
15. Property Tax Appeals.
16. Collection of Property Taxes.
17. Tax Sales.
18. Ownership Interests in Land Sold for Taxes.
Chapters 19 through 22 reserved.
23. Centrally Assessed Property.
24. Special Property Tax Applications.
Chapters 25 through 29 reserved.
30. Individual Income Tax.
31. Corporation License or Income Tax.
32. Energy-Related and Ecological Tax Incentives.
33. Small Business Investment Incentives.
Chapter 34 reserved.
35. Coal Severance Tax.
36. Oil and Gas Severance Tax.
37. Mining License Taxes.
38. Resource Indemnity Trust Tax.
Chapters 39 through 49 reserved.
50. Public Contractor's Fees and Tax.
51. Electric Energy Producers' License Tax.
52. Collection of Transportation and Communications License Taxes.
53. Telephone Company License Tax.
54. Express Company License Tax.
55. Freight Line Company License Tax.
56. Sleeping Car Company License Tax.
57. Store Licenses.
58. Coal Retailer's License Tax.
59. Cement Taxes.
Chapters 60 through 69 reserved.
70. Gasoline and Vehicle Fuels Taxes.
71. License Tax on Vehicles Propelled by Liquefied Petroleum Gas.

CHAPTER 1

TAX ADMINISTRATION

Part 1 — General Provisions

Section
15-1-101. Definitions.
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15-1-103. Destruction of tax records authorized — procedure.
15-1-104. Treasurers to destroy certain tax records.

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15-1-201. Administration of revenue laws.
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Part 5 — Disposition of Tax Proceeds

15-1-501. Disposition of moneys from certain designated license and other taxes.
15-1-502. Suspense account for receipts and refunds.
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Part 6 — Multistate Tax Compact

15-1-601. Compact adopted — text.
15-1-602. Montana compact commissioner — director of revenue.
15-1-603. Alternate.
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Part 7 — Collection of Delinquent Taxes—Warrant for Distraint

15-1-701. Warrant for distraint.
15-1-702. Issuance of warrant.
15-1-703. Emergency issuance of warrant.
15-1-704. Filing with district court.
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15-1-706. Execution upon warrant.
15-1-707. Emergency execution upon warrant.
15-1-708. Release of lien.
15-1-709. Remedy not exclusive.

Chapter Cross-References

Revenue and finance, Art. VIII, Mont. Const.

Duty of legislative subcommittees to study problems of assessment and collection of taxes, 5-5-215.

Legislative Fiscal Analyst to estimate revenue from existing and proposed taxes, 5-12-302.

Revenue Oversight Committee, Title 5, ch. 18.

Taxation of alcoholic beverages, Title 16, ch. 1, part 4.

Taxation of tobacco products, Title 16, ch. 11.

Revenue anticipation notes, Title 17, ch. 1, part 2.

Tax on gross receipts from parimutuel betting, 23-4-304.

Towns and cities may tax auctioneers, 30-11-516.

Insurance premium tax, 33-2-705.

Taxation of business trusts, 35-5-205.

Fire insurance premium tax, 50-3-109.

Federal tax liens, Title 71, ch. 3, part 2.

Inheritance and estate taxes, Title 72, ch. 16.

Department of Commerce to gather information for the purposes of making long-range plans on factors influencing economic enterprises, including taxes, 90-1-102.

Part 1

General Provisions

15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(e) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(f) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(g) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(h) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(i) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(j) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(k) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(l) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board.

History: (1)En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R.C.M. 1921; Cal. Pol. C. Sec. 3617; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977; Sec. 84-101, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 3, L. 1923; re-en. Sec. 2122.4, R.C.M. 1935; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977; Sec. 84-704, R.C.M. 1947; R.C.M. 1947, 84-101, 84-704; amd. Sec. 1, Ch. 39, L. 1979; amd. Sec. 14, Ch. 693, L. 1979; amd. Sec. 1, Ch. 578, L. 1981; amd. Sec. 2, Ch. 488, L. 1983; amd. Sec. 1, Ch. 632, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 488, in (1)(g), increased length limit from 32 feet to 45 feet and inserted "or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence".

Chapter 632 made the following changes: at end of (1)(e), substituted last sentence for former last sentence, which read: "If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement."; and inserted (1)(f).

1981 Amendment: Inserted the definition of "average wholesale value" in (1).

Cross-References

Assessment of credits, 15-8-201.

Definition of "school district", 20-15-403.

15-1-102. Person defined. As used in this title (except chapters 30 and 31), unless the context indicates otherwise, the term "person" means an individual, corporation (domestic or foreign), partnership, association, joint-stock company, or syndicate.

History: En. 84-102 by Sec. 1, Ch. 52, L. 1977; R.C.M. 1947, 84-102.

15-1-103. Destruction of tax records authorized — procedure. (1) Notwithstanding the provisions of any other chapter of this code, the department of revenue is authorized to destroy tax records more than 3 years old as shall be determined to be of no further value.

(2) Authorization for destruction of tax records shall be by the director of revenue or authorized employees of the department. A copy of the authorization and authenticated list shall be maintained by the department.

History: En. Sec. 1, Ch. 187, L. 1963; amd. Sec. 1, Ch. 9, L. 1969; amd. Sec. 61, Ch. 405, L. 1973; R.C.M. 1947, 84-724.

15-1-104. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana may destroy all tax records in his possession more than 30 years old.

History: En. 84-4175.2 by Sec. 2, Ch. 286, L. 1975; R.C.M. 1947, 84-4175.2.

15-1-105. Fines and forfeitures to county. All fines, forfeitures, and penalties incurred by a violation of any of the provisions of the state tax laws must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R.C.M. 1921; re-en. Sec. 2062, R.C.M. 1935; amd. Sec. 35, Ch. 405, L. 1973; R.C.M. 1947, 84-515; amd. Sec. 1, Ch. 581, L. 1979; amd. Sec. 2, Ch. 225, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of section, deleted "Except for the forfeiture described in 15-8-706(2),".

Part 2

Department of Revenue

Part Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Director of Department of Revenue to prepare revenue estimates and continuously study fiscal problems and tax structures, 2-7-104.

Duty of public officials to supply revenue information on request, 2-7-105.

Creation of Department of Revenue — head, 2-15-1301.

Director of Department of Revenue, 2-15-1302.

Legislative oversight of Department of Revenue, 5-18-107.

Duties of Department — classification and appraisal of property, Title 15, ch. 7, part 1; Title 15, ch. 8.

Department authorized to request and collect federal money in lieu of taxes, Title 17, ch. 3, part 3.

Department as state debt collector, Title 17, ch. 4, part 1.

Department to approve condominium declaration, 70-23-304.

Department to compute taxes in determining state land equalization payment, 77-1-502.

15-1-201. Administration of revenue laws. (1) The department of revenue shall have and exercise general supervision over the administration of the assessment and tax laws of the state and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law and may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(2) The department shall confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of

public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe. It shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work. The department shall examine the records of all municipal corporations for such purposes as are considered needful or helpful.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part).

Cross-References

Department may adopt rules relating to realty transfer certificates, 15-7-306.

Department may adopt rules relating to centrally assessed property, 15-23-108.

Department may adopt rules relating to taxation of mobile homes and housetrailers, 15-24-207.

Department may adopt rules relating to income tax, 15-30-305.

Department to adopt rules relating to new or expanded industry credit, 15-31-127.

Department to adopt rules relating to allocation of income for purposes of corporation license tax, 15-31-313.

Department may adopt rules relating to corporation income tax, 15-31-407.

Department may adopt rules relating to corporation license or income taxes, 15-31-501.

Department may adopt rules relating to preparation of lists of corporations, 15-31-602.

Department to adopt rules relating to energy-related tax incentives, 15-32-105, 15-32-203.

Department may adopt rules relating to the coal severance tax, 15-35-122.

Department to adopt rules relating to licensing and taxation of public contractors, 15-50-103.

Department to adopt rules relating to public contractors' returns, 15-50-301.

Department to adopt rules relating to telephone company license tax, 15-53-104.

Department to adopt rules relating to gasoline and vehicle fuels taxes, 15-70-104.

Department to adopt rules relating to taxation of motor vehicles, 61-3-506.

Department may adopt rules relating to taxation of condominium units, 70-23-703.

15-1-202. Enforcement of revenue laws. (1) The department of revenue may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(6), (7).

Cross-References

Official misconduct, 45-7-401.

15-1-203. Study of other tax systems. The department may investigate the tax systems of other states and countries and formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(14).

15-1-204. Consultation with governor. The department shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor such assistance as he may require.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(15).

15-1-205. Biennial report. The department shall transmit to the governor and upon request to each member of the legislature 20 days before the meeting of the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with measures as may be formulated for the consideration of the legislature. The department may include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(16); amd. Sec. 1, Ch. 584, L. 1979.

Cross-References

Critique of Revenue Oversight Committee to be appendix to report, 5-18-108.

15-1-206. Waiver and abatement of penalties — interest. (1) The department may, in its discretion, waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(2) Whenever the department waives or abates a penalty provided for in this title, it also may, in its discretion, waive or abate interest not to exceed $100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income as the result of a federal adjustment or upon filing an amended federal return, as provided for in 15-30-304, the department shall abate the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(17); amd. Sec. 1, Ch. 477, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (2) and (3).

Part 3

Investigation and Hearings

15-1-301. Investigations by department. (1) The department of revenue may examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(2) (a) The department may inspect and examine or cause an inspection and examination of the records of the officers of any municipality whenever such officer has failed, neglected, or refused to return properly the information required by 15-1-201 within the time set by the department. Upon completion of such inspection and examination, the department shall transmit to the clerk or other proper official of the municipality a statement of the expenses incurred by the department to secure the necessary information. Within 60 days after the receipt by the municipality of the above statement, the same shall be audited as other claims of the municipal corporation are audited and shall be paid into the state treasury. If the statement is not paid, the attorney general shall institute an action in the proper court against the municipality to recover the same.

(b) The officers responsible for the furnishing of the information collected pursuant to 15-1-201 shall be jointly and severally liable for any loss the municipality may suffer through their delinquency. No payment may be made to them for salary or on any other account until the cost of such inspection and examination as provided above has been paid into the treasury or to the proper officers of such municipality. They shall also be subject to the other fines and penalties as prescribed by law.

(3) The department may require persons to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes, and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(4) The department may summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to any matter which the department has authority to investigate and determine.

(5) In any matter which the department has authority to investigate and determine, it may cause the deposition of witnesses residing within or without the state or absent therefrom to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court.

History: **En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(9) thru (13).**

Cross-References

Depositions and discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

15-1-302. Witnesses — oaths, contempt, and fees. (1) Oaths to witnesses in any investigation by the department may be administered by the director of revenue or his agent.

(2) In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material question or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board or to punish the witness for such neglect or refusal.

(3) Any person who shall testify falsely in any material matter under consideration by the department shall be guilty of perjury and punished accordingly.

(4) Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the department.

History: **En. Sec. 16, Ch. 3, L. 1923; re-en. Sec. 2122.16, R.C.M. 1935; amd. Sec. 59, Ch. 405, L. 1973; R.C.M. 1947, 84-716.**

Cross-References

Subpoena of person for failure to file report on centrally assessed property, 15-23-104.

Witness fees, Title 26, ch. 2, part 5.

15-1-303. Penalty for refusal to furnish information. (1) If any person shall refuse inspection of any books or records when requested by the department or its authorized agent or shall refuse or neglect to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable and may add to its assessment thus made not more than 20% thereof as a penalty for such refusal or neglect. The department shall immediately notify the person so assessed of its action, either by certified or registered mail or by personal service of such notice.

(2) Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed shall:

(a) within 20 days after receiving such notice, file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then, from all information presented to it or from its own investigation, make such assessment as to it seems just and equitable; or

(b) within 60 days after receiving such notice, appeal to the district court of Lewis and Clark County from the action of the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom, together with a bond conditioned for the payment of such amount as the judgment of said court may require within 30 days after the entry of such judgment.

(3) Upon the hearing of such appeal, the court or the state tax appeal board shall determine whether the department was entitled to inspect such books or records or was entitled to the information requested by the department. If the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any

manner the assessment as made or the penalty added to such assessment by the department, but if the court or board shall find that the department was not entitled to inspect such books or records or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department.

History: **En. Sec. 14, Ch. 3, L. 1923; re-en. Sec. 2122.14, R.C.M. 1935; amd. Sec. 58, Ch. 405, L. 1973; R.C.M. 1947, 84-714.**

Part 4

Protest Payments, Actions to Recover, and Alternative Remedies

Part Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Judgment to be against Treasurer in suit to recover taxes paid under protest when funds held by Treasurer, 15-8-115.

Refund of taxes illegally refunded — concurrent remedy, 15-16-602.

Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.

Justice Court without jurisdiction to hear tax issues, 25-31-101.

15-1-401. Repealed. Sec. 7, Ch. 501, L. 1981.

History: **En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R.C.M. 1921; re-en. Sec. 2409, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1955; amd. Sec. 3, Ch. 126, L. 1963; R.C.M. 1947, 84-4501; amd. Sec. 2, Ch. 581, L. 1979; amd. Sec. 5, Ch. 463, L. 1981.**

15-1-402. Payment of taxes under protest — action to recover. (1) The person upon whom a tax or license fee is being imposed may proceed under 15-1-406 or may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested. The payment must:

(a) be made to the officer designated and authorized to collect it; and

(b) specify the grounds of protest.

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.

(4) Any action instituted to recover any such portions of tax or license fee paid under protest shall be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board.

(5) When any protested tax or license fee is payable in installments, then any subsequent installment portion considered unlawful by the state tax appeal board need not be paid and no action or suit need be commenced to recover the same, but the determination of the action or suit commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or

any part thereof refunded to him or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(6) All portions of taxes and license fees paid under protest to a county or municipality shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any action or suit to recover the same.

(7) Nothing contained herein prohibits the investment of the money of this fund in the state unified investment program. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(8) (a) If no action is commenced within the time herein specified or if such action is commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs.

(b) If such action is finally determined adversely to a county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax or license fee, with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such tax or license fee and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest.

History: En. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2269, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977; R.C.M. 1947, 84-4502; amd. Sec. 1, Ch. 281, L. 1979; amd. Sec. 1, Ch. 680, L. 1979; amd. Sec. 6, Ch. 463, L. 1981; amd. Sec. 4, Ch. 501, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 463 inserted "may proceed under 15-1-406 or" after "The person upon whom a tax or license fee is being imposed" at the beginning of (1).

Chapter 501 rewrote the entire section. For former text see sec. 1, Ch. 680, L. 1979, and sec. 1, Ch. 281, L. 1979.

Composite Section: Chapter 463, L. 1981 allows a taxpayer to pursue a declaratory judgment proceeding to test the validity of a tax levy in lieu of proceeding under 15-1-402.

Chapter 501, L. 1981 rewrote 15-1-402 making it necessary for the Code Commissioner to insert the amendatory language of Ch. 463, in the most appropriate place within the rewritten language of Ch. 501.

Cross-References

Section applicable to taxes levied to meet bond obligations and expenses of county water/sewer districts, 7-13-2308.

Section applicable to taxes paid under protest after increase of assessment over owner's statement, 15-1-403.

Section applicable to livestock taxes, 15-24-910.

Payment of assessment for forest protection under protest, 76-13-210.

15-1-403. Assessment for taxation — increase over statement of owner. (1) Whenever any person has delivered to the department of revenue or its agent a sworn statement of his property subject to taxation as now provided by law and giving the estimated value of such property and the department or its agent shall increase such estimated value or add other property to such assessment list, the agent shall, at least 10 days prior to the meeting of the county tax appeal board, give to such person written notice of such change, which notice shall be substantially in the following form:

(Date) ....

Mr. ......:

A change has been made in your assessment list as follows:

(Set out and describe specifically changes made in list.)

...., Agent
Department of Revenue

(2) Such person may then appear before the county tax appeal board and contest the same. If the assessment of any such person has been added to or changed, either by the department or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the state tax appeal board to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in 15-1-402.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2270, R.C.M. 1935; amd. Sec. 85, Ch. 405, L. 1973; R.C.M. 1947, 84-4503; amd. Sec. 5, Ch. 501, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "state tax appeal board" for "court" after "adjudged by the" in (2); deleted language relating to payment and recovery of contested taxes from the end of (2). For former text see sec. 85, Ch. 405, L. 1973.

15-1-404. Other remedies superseded. The remedies hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedies hereby provided are deemed by the court to be inadequate.

History: En. Sec. 4026, Pol. C. 1895; re-en. Sec. 2745, Rev. C. 1907; re-en. Sec. 2272, R.C.M. 1921; re-en. Sec. 2272, R.C.M. 1935; R.C.M. 1947, 84-4504; amd. Sec. 7, Ch. 463, L. 1981.

Compiler's Comments

1981 Amendment: Changed "remedy" to "remedies" and "is" to "are".

15-1-405. Injunction not to be used to restrain enforcement of tax. No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof or to restrain the sale of any property for the nonpayment of taxes except:

(1) where the tax or the part thereof sought to be enjoined is illegal or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.

(2) where the property is exempt from taxation.

History: En. Sec. 204, p. 128, L. 1891; re-en. Sec. 4023, Pol. C. 1895; re-en. Sec. 2741, Rev. C. 1907; re-en. Sec. 2268, R.C.M. 1921; re-en. Sec. 2268, R.C.M. 1935; R.C.M. 1947, 84-4505.

15-1-406. Alternative remedy — declaratory judgment. (1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-402, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the imposition of the tax. The court shall consolidate all actions brought under subsection (1) which challenge the same tax levy. The decision of the court shall apply to all similarly situated taxpayers except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid when due as a condition of continuing the action.

History: En. Secs. 1, 4, Ch. 463, L. 1981.

15-1-407. Alternative remedy — procedure. (1) Except as provided in subsection (2), an action pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-1-406 may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23; or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under 15-1-406 may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to 15-1-406 if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) of this section does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under 15-1-406 all issues shall be tried by the court.

History: En. Sec. 2, Ch. 463, L. 1981.

15-1-408. Alternative remedy — judgment. If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(1) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

(2) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year; or

(3) such other remedy as the court considers appropriate.

History: En. Sec. 3, Ch. 463, L. 1981.

Part 5

Disposition of Tax Proceeds

Part Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

15-1-501. *(Temporary)* **Disposition of moneys from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electrical energy producer's license taxes under chapter 51;

(c) metalliferous mines license taxes under chapter 37;

(d) severance taxes allocated to the general fund under chapter 36;

(e) liquor license taxes under Title 16;

(f) telephone [company] license taxes under chapter 53; and

(g) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(4) Thirty-three and one-third percent of the total collections of the oil severance tax under chapter 36 shall be deposited into the local government block grant account within the state special revenue fund. After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections shall be deposited in the general fund. **(Ineffective July 1, 1985—Applicable to tax years ending on or before December 31, 1984.)**

15-1-501. *(Effective July 1, 1985—Applicable to tax years beginning after December 31, 1984)* **Disposition of moneys from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone [company] license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(4) Thirty-three and one-third percent of the total collections of the oil severance tax under chapter 36 shall be deposited into the local government block grant account within the state special revenue fund. After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections shall be deposited in the general fund.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965; amd. Sec. 51, Ch. 100, L. 1973; amd. Sec. 1, Ch. 300, L. 1975; R.C.M. 1947, 84-1901(part); amd. Sec. 9, Ch. 634, L. 1979; amd. Sec. 2, Ch. 700, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 619, L. 1983; amd. Sec. 1, Ch. 707, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 619 deleted (1)(c) of temporary version. Chapter 619 is effective July 1, 1985.

Chapter 707 made the following changes: at beginning of (1)(d) of temporary version and at beginning of (1)(c) of version effective July 1, 1985, deleted "oil and gas"; and inserted (4).

Cross-References

Local government block grant program, Title 7, ch. 6, part 3.

Disposition of corporate license tax collected from banks and savings and loan associations, 15-31-702.

Disposition of coal severance taxes, 15-35-108.

Disposition of oil and gas severance taxes, 15-36-112.

Disposition of resource indemnity trust tax, 15-38-106.

Disposition of freight line company license tax, 15-55-110.

Disposition of sleeping car company license tax, 15-56-102.

Disposition of store license tax, 15-57-109.

Disposition of coal retailer's license tax, 15-58-109.

Disposition of cement producer's and dealer's tax, 15-59-108, 15-59-208.

Disposition of gasoline tax, 15-70-101.

Disposition of license tax on vehicles propelled by liquified petroleum gas, 15-71-104.

Montana Alcoholic Beverage Code, Title 16, ch. 1 through 4 and ch. 6.

General fund, 17-2-102.

Taxing power pledged for payment of long-range building program bonds, 17-5-402.

Percentage of income and corporation license taxes pledged for payment of long-range building program bonds, 17-5-407.

Percentage of income and corporation license taxes appropriated to debt service account, 17-5-408.

Taxing power pledged for payment of general obligation highway bonds, 17-5-501.

Taxing power pledged for payment of rent incurred in lease of buildings, 18-3-101.

State equalization aid to public schools, 20-9-343.

Disposition of public contractor's fees, 37-71-105.

Disposition of tax and fees in lieu of tax on vehicles, 61-3-509.

Taxing power pledged for payment of renewable resource development bonds, 90-2-121, 90-2-122.

Appropriation of portion of coal severance tax to renewable resource development fund account, 90-2-124.

Taxing power not pledged for payment of housing bonds, 90-6-123.

15-1-502. Suspense account for receipts and refunds. The department of revenue shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the department. All moneys received by the department shall be temporarily credited by the state treasurer to the department's suspense account. Each month the department of revenue shall send to the department of administration a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963; amd. Sec. 14, Ch. 516, L. 1973; R.C.M. 1947, 84-725.

Cross-References

Inheritance tax, Title 72, ch. 16.

15-1-503. Refund of overpayment — procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the department of revenue and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of 5 years from the time the tax was paid. Within 6 months after the claim is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund shall be made to the taxpayer within 60 days after the claim is approved; if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by 15-30-148.

History: En. Sec. 2, Ch. 126, L. 1963; amd. Sec. 15, Ch. 516, L. 1973; R.C.M. 1947, 84-726.

Cross-References

Applicable to refund of tax on tobacco products other than cigarettes, 16-11-206.

Inheritance tax, Title 72, ch. 16.

15-1-504. Settlement of county treasurer with state treasurer. The county treasurer, between the 1st and 20th days of each month, must remit to the state treasurer all moneys belonging to the state which were collected by such treasurer during the preceding month. Such remittance shall be accompanied by a detailed report upon such form as the state treasurer may prescribe, and for all such moneys by him collected and not remitted by him to the state treasurer within 5 days from the time herein required, he shall pay interest at the rate of 10% per annum.

History: En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 2255, R.C.M. 1921; Cal. Pol. C. Sec. 3865; amd. Sec. 1, Ch. 47, L. 1925; re-en. Sec. 2255, R.C.M. 1935; R.C.M. 1947, 84-4401.

Cross-References

Procedure when tax refunded by county, 15-16-601.

15-1-505. Report of county clerk and recorder to state auditor. The county clerk and recorder, between the 1st and 20th days of each month, must make a report to the state auditor, in such form as the state auditor may prescribe, showing specifically the amount of moneys due the state from each particular source of revenue for the collections of the preceding month.

History: En. Sec. 3992, Pol. C. 1895; re-en. Sec. 2717, Rev. C. 1907; re-en. Sec. 2257, R.C.M. 1921; Cal. Pol. C. Sec. 3868; amd. Sec. 2, Ch. 47, L. 1925; re-en. Sec. 2257, R.C.M. 1935; R.C.M. 1947, 84-4402.

Cross-References

Procedure when tax refunded by county, 15-16-601.

15-1-506. Annual settlements with county clerk. The department of revenue, county attorney, and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk and recorder of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R.C.M. 1921; re-en. Sec. 2042, R.C.M. 1935; amd. Sec. 21, Ch. 405, L. 1973; R.C.M. 1947, 84-448.

Part 6

Multistate Tax Compact

Part Cross-References

Advisory Council for Multistate Tax Compact, 2-15-1311.

15-1-601. Compact adopted — text. The Multistate Tax Compact is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as set forth herein below. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

(2) promote uniformity or compatibility in significant components of tax systems;

(3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;

(4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

(1) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(2) "subdivision" means any government unit or special district of a state;

(3) "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

(4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;

(5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;

(6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;

(7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

(8) "use tax" means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax;

(9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements Of Income Tax Laws

Taxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party

states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division Of Income

(1) As used in this article, unless the context otherwise requires:

(a) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

(e) "nonbusiness income" means all income other than business income;

(f) "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;

(h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements Of Sales And Use Tax Laws

Tax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates — Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission

Organization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations And Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular

time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, “tax”, in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission’s arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents

within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force And Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other

state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction And Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973; amd. Sec. 1, Ch. 163, L. 1975; R.C.M. 1947, 84-6701.

15-1-602. Montana compact commissioner — director of revenue. The director of the department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973; R.C.M. 1947, 84-6702.

15-1-603. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973; R.C.M. 1947, 84-6703.

15-1-604. Not Codified. Committee abolished. Sec. 1, 82A-1806, Ch. 272, L. 1971.

History: En. Sec. 4, Ch. 17, L. 1969; amd. Sec. 27, Ch. 453, L. 1977; R.C.M. 1947, 84-6704.

Part 7

Collection of Delinquent Taxes — Warrant for Distraint

15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department of revenue, directed to a sheriff of any county of Montana or to any agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

History: En. Sec. 1, Ch. 439, L. 1981.

15-1-702. Issuance of warrant. (1) If a tax, other than inheritance or estate tax, administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703.

History: En. Sec. 2, Ch. 439, L. 1981.

15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

History: En. Sec. 3, Ch. 439, L. 1981.

15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

History: **En. Sec. 4, Ch. 439, L. 1981.**

15-1-705. Hearing. (1) Except as provided in 15-1-707, a taxpayer has the right to request a hearing on the matter of tax liability prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to hearing to the taxpayer. A request for a hearing must be made in writing within 30 days of the date of the notice. This notice may be given prior to the notice referred to in 15-1-702. If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled.

(3) The hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant.

History: **En. Sec. 5, Ch. 439, L. 1981.**

15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.

History: **En. Sec. 6, Ch. 439, L. 1981.**

Cross-References

Execution of judgment, Title 25, ch. 13.

15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department must notify the taxpayer and inform the taxpayer that he has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be

requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that such action is appropriate.

History: **En. Sec. 7, Ch. 439, L. 1981.**

15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

History: **En. Sec. 8, Ch. 439, L. 1981.**

15-1-709. Remedy not exclusive. The use of the warrant for distraint provided for in 15-1-701 through 15-1-708 is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts.

History: **En. Sec. 9, Ch. 439, L. 1981.**

CHAPTER 2

STATE TAX APPEAL BOARD

Part 1 — Composition and Organization

Section
15-2-101. State tax appeal board — appointment of members — term of office.
15-2-102. Qualification and compensation.
15-2-103. Organization, quorum, sessions.
15-2-104. Employees — expenses — minutes — rules.
15-2-105. Office, furnishings, and supplies.
15-2-106. Seal.

Part 2 — Powers and Duties

15-2-201. Powers and duties.

Part 3 — Appeal Procedure

15-2-301. Appeal of county tax appeal board decisions.
15-2-302. Direct appeal from department decision to state tax appeal board — hearing.
15-2-303. Judicial review of contested cases.
15-2-304. Petition for interlocutory adjudication.
15-2-305. Jurisdiction to make interlocutory adjudication.
15-2-306. Board may order refund.
15-2-307. Challenge to assessment rules or procedures.
15-2-308. Procedure.
15-2-309. Remedy.
15-2-310. Tax to be paid.

Chapter Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Creation of State Tax Appeal Board, 2-15-1015.

"State Board" or "Board" defined as State Tax Appeal Board, 15-1-101.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Part 1

Composition and Organization

15-2-101. State tax appeal board — appointment of members — term of office. On July 1, 1973, there shall be created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate; provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of 6 years and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, shall be made on or before January 31 during the session of the legislature next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923; re-en. Sec. 2122.1, R.C.M. 1935; amd. Sec. 50, Ch. 100, L. 1973; amd. Sec. 45, Ch. 405, L. 1973; R.C.M. 1947, 84-701.

15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary of $26,003 in fiscal 1984 and $26,523 in fiscal 1985 and thereafter. The remaining state tax appeal board members shall be paid a salary of $25,305 in fiscal 1984 and $25,811 in fiscal 1985 and thereafter. All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature.

History: En. Sec. 2, Ch. 3, L. 1923; re-en. Sec. 2122.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967; amd. Sec. 46, Ch. 405, L. 1973; amd. Sec. 26, Ch. 453, L. 1977; R.C.M. 1947, 84-702; amd. Sec. 1, Ch. 620, L. 1979; amd. Sec. 5, Ch. 605, L. 1981; amd. Sec. 4, Ch. 656, L. 1983.

Compiler's Comments

1983 Amendment: In (2), increased the salary of the chairman from $23,554 in fiscal year 1982 and $25,493 in fiscal years after fiscal year 1982 to $26,003 in fiscal year 1984 and $26,523 in fiscal years after 1984; and increased the salaries of members of the board from $22,924 in fiscal year 1982 and $24,809 in fiscal years after 1982 to $25,305 in fiscal year 1984 and $25,811 in fiscal years after fiscal year 1984.

1981 Amendment: In (2), increased the salary of chairman from $20,276 in 1980 and $21,779 in 1981 to $23,554 in 1982 and $25,493 in 1983; increased the salary of members from $19,843 in 1981 and $21,200 in 1981 to $22,924 in 1982 and $24,809 in 1983.

15-2-103. Organization, quorum, sessions. The members of the state tax appeal board shall, without delay, meet at the state capital, and the governor shall designate one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Saturdays, Sundays, and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capital when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, L. 1923; re-en. Sec. 2122.3, R.C.M. 1935; amd. Sec. 47, Ch. 405, L. 1973; R.C.M. 1947, 84-703.

15-2-104. Employees — expenses — minutes — rules. The state tax appeal board may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; re-en. Sec. 2122.5, R.C.M. 1935; amd. Sec. 1, Ch. 82, L. 1947; amd. Sec. 49, Ch. 405, L. 1973; R.C.M. 1947, 84-705.

15-2-105. Office, furnishings, and supplies. The board shall keep its office at the capital and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923; re-en. Sec. 2122.6, R.C.M. 1935; amd. Sec. 50, Ch. 405, L. 1973; R.C.M. 1947, 84-706.

15-2-106. Seal. The state tax appeal board shall have a seal and such seal shall have the following words engraved thereon, "Tax Appeal Board of the State of Montana". The board shall authenticate all of its orders, records, and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923; re-en. Sec. 2122.17, R.C.M. 1935; amd. Sec. 60, Ch. 405, L. 1973; R.C.M. 1947, 84-717.

Part 2

Powers and Duties

15-2-201. Powers and duties. (1) It shall be the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance shall be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal.

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(3) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law.

History: **En. Sec. 8, Ch. 3, L. 1923; re-en. Sec. 2122.8, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973; amd. Sec. 3, Ch. 38, L. 1974; R.C.M. 1947, 84-708; amd. Sec. 1, Ch. 502, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (1)(b).

Cross-References

Witness fees in courts of record, 26-2-501.

Perjury, 45-7-201.

Part 3

Appeal Procedure

Part Cross-References

Department to defend property tax appeals, 15-8-115.

15-2-301. Appeal of county tax appeal board decisions. (1) Any person or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within 20 calendar days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The county tax appeal boards shall mail their decisions to the property assessment division of the department. Receipt, for purposes of appeal, by the department is when the county tax appeal board decision is received by the property assessment division of the department. The state board shall set such appeal for hearing either in its office in the capital or such county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least 15 calendar days' notice of the time and place of such hearing.

(2) At the time of giving such notice, the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith. The state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any such appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made.

(3) On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received and the cost thereof may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board shall not be bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful.

History: En. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; R.C.M. 1947, 84-709; amd. Sec. 1, Ch. 611, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Appeal of increase of value over owner's statement, 15-1-403.

Appeal by person aggrieved by state debt collection procedure, 17-4-111.

15-2-302. Direct appeal from department decision to state tax appeal board — hearing. (1) A person may appeal to the state tax appeal board any action of the department of revenue involving:

(a) property centrally assessed under chapter 23 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which such appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department action. The complaint shall set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint and at such time mail a copy to the complainant. The answer shall set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) The board shall thereafter hear the parties in accordance with the contested case provisions of the Montana Administrative Procedure Act.

History: En. 84-709.4 by Sec. 2, Ch. 155, L. 1977; R.C.M. 1947, 84-709.4.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Appeal of penalty assessment for failure to furnish information to Department, 15-1-303.

New industrial property classification, 15-6-135, 15-6-152.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Appeal of action of Department on application for revision of income tax, 15-30-147.

Appeal of action of Department on application for revision of corporation license or income tax, 15-31-532.

Appeal of determination of metalliferous mines license tax, 15-37-110.

Appeal of determination of freight line company license tax, 15-55-106.

Appeal of determination relating to gasoline and vehicle fuels taxes, 15-70-111.

Appeal of decision of Department on unclaimed property, 70-9-311.

15-2-303. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this part.

(2) Proceedings for review shall be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located (except the taxpayer may, at his option, file in the district court of the first judicial district) and serving a copy of the petition on the department of revenue or taxpayer within 60 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 60 days after the decision thereon. The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review but failure to do so shall have no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.

(3) Notwithstanding any other provision, proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission shall be instituted in the district court of the first judicial district.

(4) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced.

History: En. 84-708.1 by Sec. 52(b), Ch. 405, L. 1973; amd. Sec. 2, Ch. 277, L. 1974; amd. Sec. 1, Ch. 346; amd. Sec. 1, Ch. 404, L. 1975; R.C.M. 1947, 84-709.1; amd. Sec. 1, Ch. 77, L. 1981; amd. Sec. 6, Ch. 501, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 77 substituted "department of revenue or taxpayer" for "state tax appeal board" in first sentence of (2) and substituted the final two sentences of (2) for "All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceedings".

Chapter 501 increased the time period for serving a copy of the petition after a final decision has been reached from 30 to 60 days.

Cross-References

Review of decision relating to gasoline and vehicle fuels taxes, 15-70-111.

Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.

Public Service Commission jurisdiction, 69-1-102.

Appeal of decision of Board on unclaimed property, 70-9-312.

15-2-304. Petition for interlocutory adjudication. After a proceeding has commenced before the state tax appeal board but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for such adjudication shall be signed by each party to the proceeding. One party shall be designated as the petitioner, and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, statute, or regulation and do not require the hearing of evidence to be resolved and that the controversy would be more expeditiously resolved by such adjudication.

History: **En. 84-709.2 by Sec. 2, Ch. 404, L. 1975; R.C.M. 1947, 84-709.2(part).**

15-2-305. Jurisdiction to make interlocutory adjudication. A district court may make an interlocutory adjudication of an issue pending in the state tax appeal board if that issue involves only the interpretation of a constitutional provision, statute, or regulation and does not require the hearing of evidence. Appeals from the ruling of the court may be appealed as in other civil actions.

History: **En. 84-709.3 by Sec. 3, Ch. 404, L. 1975; R.C.M. 1947, 84-709.3(part).**

Cross-References

Civil appeals, Title 25, ch. 21.

15-2-306. Board may order refund. (1) In any appeal before the state tax appeal board when a taxpayer has paid taxes or license fees under written protest and the taxes or license fees are held by the treasurer of a unit of local government in a protest fund, the state tax appeal board shall enter judgment, exclusive of costs, if the board finds that the taxes or license fees should be refunded.

(2) The state tax appeal board's judgment issued pursuant to subsection (1) shall be held in abeyance:

(a) until the time period for appeal specified in 15-1-402(4) has passed; or

(b) if the final decision of the state tax appeal board has been appealed in accordance with 15-2-303.

History: **En. Sec. 2, Ch. 501, L. 1981.**

15-2-307. Challenge to assessment rules or procedures. An aggrieved taxpayer may, in lieu of proceeding under Title 15, chapter 15, part 1, bring a declaratory judgment action in the district court seeking a declaration that a method or procedure of assessment of property adopted or utilized by the department of revenue is illegal or improper.

History: **En. Sec. 1, Ch. 526, L. 1981.**

15-2-308. Procedure. (1) Except as provided in subsection (2), an action pursuant to 15-2-307 is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-2-307 may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, Rule 23; or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under 15-2-307 may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to 15-2-307 if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) of this section does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under 15-2-307 all issues shall be tried by the court.

History: **En. Sec. 2, Ch. 526, L. 1981.**

15-2-309. Remedy. (1) If the district court determines that the challenged rule or procedure is improper, it may direct:

(a) that the assessment be changed for the taxpayer or taxpayers who brought the action as well as all similarly situated taxpayers; or

(b) such other remedy as the court considers appropriate.

(2) The remedy directed by the district court may apply only to taxes imposed during or after the year the rule or procedure is challenged. The remedy may not apply to the application or implementation of the rule or procedure as it applies to taxes imposed in years prior to the challenge under 15-2-307.

History: **En. Sec. 3, Ch. 526, L. 1981.**

15-2-310. Tax to be paid. A tax which is based on the rule or procedure being challenged under 15-2-307 and which becomes due before the final determination of the validity of the rule or procedure must be paid when due as a condition of continuing the action.

History: **En. Sec. 4, Ch. 526, L. 1981.**

CHAPTERS 3 THROUGH 5

RESERVED

CHAPTER 6

PROPERTY SUBJECT TO TAXATION

Part 1 — Classification

Section

15-6-101. Property subject to taxation — classification.
15-6-102 through 15-6-121. Repealed.
15-6-122 through 15-6-130 reserved.
15-6-131. Class one property — description — taxable percentage.
15-6-132. Class two property — description — taxable percentage.
15-6-133. Class three property — description — taxable percentage.
15-6-134. Class four property — description — taxable percentage.
15-6-135. Class five property — description — taxable percentage.
15-6-136. Class six property — description — taxable percentage.
15-6-137. Class seven property — description — taxable percentage.
15-6-138. Class eight property — description — taxable percentage.
15-6-139. Class nine property — description — taxable percentage.
15-6-140. Class ten property — description — taxable percentage.
15-6-141. Class eleven property — description — taxable percentage.
15-6-142. Class twelve property — description — taxable percentage.
15-6-143 through 15-6-150 reserved.
15-6-151. Application for certain class four classifications.
15-6-152. Application for classification as new industrial property.

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15-6-201. Exempt categories.
15-6-202. Freeport merchandise and business inventories exemption.
15-6-203. Veterans' clubhouse exemption — incompetent veterans' trusts.
15-6-204. Moneys and credits exemption.
15-6-205. State water conservation projects exempt.
15-6-206. Irrigation and drainage facilities — when exempt.
15-6-207. Agricultural exemptions.
15-6-208. Mineral exemptions.
15-6-209. Community services buildings exempt.
15-6-210. Antique aircraft exempt — application procedure.
15-6-211. Certain disabled veterans' residences exempt.
15-6-212. Not Codified.

Chapter Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Reservation of power to tax certain persons and property within land purchased by United States under Art. I, sec. 8, part 17 of the United States Constitution, 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to the United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property purchased for national forest purposes, 2-1-210.

Rights, privileges, and immunities reserved to Indians on assumption of criminal jurisdiction over Flathead Indian Reservation, 2-1-304.

Suspension of property taxes for persons in military services — application required, 10-1-606.

Taxable value defined, 15-1-101.

Taxes on banks that have ceased to do business, 32-1-509.

Farm mutual insurers liable for property taxes, 33-4-409.

Fraternal benefit societies exempt from taxes other than on real estate and office furniture, 33-7-407.

Real and personal property of insurance guaranty association subject to taxation, 33-10-107.

Real property of life and health insurance guaranty association — subject to taxation, 33-10-208.

Taxation of motor vehicles, Title 61, ch. 3, part 5.

Owner of life estate under duty to pay taxes, 70-16-103.

Covenant to pay taxes or assessments runs with the land, 70-17-203.

Payment of taxes required to prove adverse possession, 70-19-411.

Payment of property taxes on condominiums prior to completion and on filing of declaration, 70-23-205, 70-23-304.

Taxation of condominium units, Title 70, ch. 23, part 7.

Taxation of property subject to a conservation easement, 76-6-208.

Lessee of state land subject to personal property taxes, 77-6-114.

Part 1

Classification

Part Cross-References

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with 15-6-131 through 15-6-141.

History: (1)En. Sec. 1667, Comp. Stat. 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, Pol. C. 1895; re-en. Sec. 2498, Rev. C. 1907; re-en. Sec. 1997, R.C.M. 1921; Cal. Pol. C. Sec. 3607; re-en. Sec. 1997, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1977; Sec. 84-201, R.C.M. 1947; (2)En. 84-301.1 by Sec. 1, Ch. 566, L. 1977; Sec. 84-301.1, R.C.M. 1947; R.C.M. 1947, 84-201, 84-301.1; amd. Sec. 13, Ch. 686, L. 1979; amd. Sec. 15, Ch. 693, L. 1979; amd. Sec. 18, Ch. 712, L. 1979.

Cross-References

Suspension of property taxes for persons in military services, 10-1-606.

Reduced property tax rate for vehicle of disabled veteran, 10-2-301 through 10-2-304.

Property exempt from taxation, Title 15, ch. 6, part 2.

Extension of classifications under former energy-conservation tax incentive act, 15-32-108.

15-6-102 through 15-6-121. Repealed. Sec. 27, Ch. 693, L. 1979.

15-6-106. Repealed. Sec. 17, Ch. 634, L. 1979.

15-6-121. Repealed. Sec. 30, Ch. 712, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

15-6-102 through 15-6-109. En. 84-301.2 thru 84-301.9 by Secs. 2 thru 9, Ch. 566, L. 1977; R.C.M. 1947, 84-301.2 thru 84-301.9.

15-6-110. En. 84-301.10 by Sec. 10, Ch. 566, L. 1977; amd. Sec. 11, Ch. 566, L. 1977; R.C.M. 1947, 84-301.10.

15-6-111 through 15-6-114. En. 84-301.11 thru 84-301.14 by Secs. 12 thru 15, Ch. 566, L. 1977; R.C.M. 1947, 84-301.11 thru 84-301.14.

15-6-115. En. 84-301.15 by Sec. 16, Ch. 566, L. 1977; amd. Sec. 11, Ch. 566, L. 1977; R.C.M. 1947, 84-301.15.

15-6-116. En. 84-301.16 by Sec. 17, Ch. 566, L. 1977; amd. Sec. 2, Ch. 499, L. 1977; amd. Sec. 8, Ch. 576, L. 1977; R.C.M. 1947, 84-301.16.

15-6-117 through 15-6-119. En. 84-301.17 thru 84-301.19 by Secs. 18 thru 20, Ch. 566, L. 1977; R.C.M. 1947, 84-301.17 thru 84-301.19.

15-6-120. En. Sec. 15, Ch. 498, L. 1977; R.C.M. 1947, 84-310.20.

15-6-121. En. Sec. 3, Ch. 502, L. 1977; R.C.M. 1947, 84-301.21.

15-6-122 through 15-6-130 reserved.

15-6-131. Class one property — description — taxable percentage. (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

History: **En. Sec. 1, Ch. 693, L. 1979; amd. Sec. 1, Ch. 323, L. 1983.**

Compiler's Comments

1983 Amendment: Deleted former (1)(a), which read: "the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and"; in (2) after "is taxed" deleted "as follows"; deleted former (2)(a), which read: "Property described in subsection (1)(a) is taxed at 100% of its market value, as determined by the department of revenue."; and deleted introductory language of former (2)(b), which read: "Property described in subsection (1)(b) is taxed".

Cross-References

Assessment of property, 15-8-111.

Mines net proceeds tax, Title 15, ch. 23, part 5.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-132. Class two property — description — taxable percentage. (1) Class two property includes:

(a) the annual gross proceeds of metal mines;

(b) the annual gross proceeds of underground coal mines; and

(c) the annual gross proceeds of coal mines using the strip-mining method.

(2) Class two property is taxed as follows:

(a) Property described in subsection (1)(a) is taxed at 3% of its annual gross proceeds, as defined in 15-23-801.

(b) Property described in subsection (1)(b) is taxed at 33 ⅓ % of its annual gross proceeds.

(c) Property described in subsection (1)(c) is taxed at 45% of its annual gross proceeds.

History: **En. Sec. 2, Ch. 693, L. 1979.**

Cross-References

Coal and metal mines — exemptions, 15-6-208.

Assessment of property, 15-8-111.

Coal gross proceeds tax, Title 15, ch. 23, part 7.

Metal mines gross proceeds tax, Title 15, ch. 23, part 8.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-133. Class three property — description — taxable percentage. (1) Class three property includes agricultural land as defined in 15-7-202.

(2) Class three property is taxed at 30% of its productive capacity.

History: **En. Sec. 3, Ch. 693, L. 1979.**

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Definition of "agricultural", 15-1-101.

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(c) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $1,000	$0 - $1,000	0%
1,001 - 2,000	1,001 - 2,000	10%
2,001 - 2,800	2,001 - 3,000	20%
2,801 - 3,600	3,001 - 4,000	30%
3,601 - 4,400	4,001 - 5,000	40%
4,401 - 5,200	5,001 - 6,000	50%
5,201 - 6,000	6,001 - 7,000	60%
6,001 - 6,800	7,001 - 8,000	70%
6,801 - 7,600	8,001 - 9,000	80%
7,601 - 8,000	9,001 - 10,000	90%

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%.

History: En. Sec. 4, Ch. 693, L. 1979; amd. Sec. 3, Ch. 638, L. 1979; amd. Sec. 1, Ch. 599, L. 1981; amd. Sec. 59, Ch. 575, L. 1981; amd. Sec. 1, Ch. 564, L. 1981; amd. Sec. 1, Ch. 25, L. 1983; amd. Sec. 2, Ch. 632, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 25 made permanent the 1979 temporary amendments relating to golf courses.

Chapter 632 deleted former (1)(c), which read: "(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;"; and in (1)(c) after "real property" deleted "or a trailer or mobile home used as a permanent dwelling".

1981 Amendments: Chapter 564 inserted "Except as provided in 15-24-1402" at the beginning of (2)(a).

Chapter 575 inserted "including otherwise tax-exempt income of all types" in (1)(d)(iii) (now (1)(c)(iii)); changed "$7,000" to "$8,000" and "$8,000" to "$10,000" in (1)(d)(iii) (now (1)(c)(iii)); inserted subsection (2)(b); deleted "(1)(d) (now (1)(c)) and" after "subsection" in (2)(c).

Chapter 599 added "Except as provided in 15-24-1501" at the beginning of (2)(a).

Cross-References

Definitions of "improvements" and "mobile home", 15-1-101.

Application for classification of dwelling under subsection (1)(d), 15-6-151.

Certain disabled veterans' residences exempt, 15-6-211.

Effect of periodic revaluation, 15-7-103.

Assessment of property, 15-8-111.

New industrial property tax prepayment, 15-16-302.

Reduction of tax on improvements destroyed by natural disaster, 15-16-611.

Payment of tax on mobile homes and housetrailers, Title 15, ch. 24, part 2.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Real estate of fraternal benefit societies subject to taxation, 33-7-407.

Taxation of condominiums, Title 70, ch. 23, part 7.

Taxation of property subject to a conservation easement, 76-6-208.

15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value.

History: (1), (2)(a), (3) thru (6)En. Sec. 5, Ch. 693, L. 1979; amd. Sec. 4, Ch. 660, L. 1979; (2)(b)En. Sec. 1, Ch. 659, L. 1979; amd. Sec. 60, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted subsection (1)(c) relating to recreational vehicles owned by low-income retirees; substituted "department of health and environmental sciences'" for "department's" in (2)(b); deleted brackets before "as to" and after "equipment" in (2)(b); inserted "and water" after "air" in (2)(b).

Cross-References

Application for classification of property under subsection (1)(c), 15-6-151.

Application for classification as new industrial property, 15-6-152.

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

New industrial property not eligible for benefits under MELDA, 15-24-1308.

School district may impose additional prerequisites to qualify as new industrial property, 20-9-407.

Payment of taxes on motor vehicles, 61-3-303, 61-3-501.

Sales tax on new motor vehicles — property tax exemption, 61-3-502.

Fee in lieu of tax imposed on motor homes, travel trailers, and campers, 61-3-521.

15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) livestock and poultry and the unprocessed products of both;

(b) all unprocessed agricultural products on the farm or in storage except all perishable fruits and vegetables in farm storage and owned by the producer;

(c) items of personal property intended for lease in the ordinary course of business provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis.

(2) Class six property is taxed at 4% of its market value.

History: En. Sec. 6, Ch. 693, L. 1979; amd. Sec. 1, Ch. 330, L. 1981; amd. Sec. 5, Ch. 613, L. 1981; amd. Sec. 2, Ch. 599, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1)(c).

1981 Amendments: Chapter 330 deleted "and livestock and poultry and the unprocessed products of both" from the end of (1)(b).

Chapter 613 deleted all reference to business inventory and rearranged.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Definitions of "agricultural" and "poultry", 15-1-101.

Assessment of property, 15-8-111.

Taxation of business inventories, Title 15, ch. 24, part 4.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property; and

(d) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value.

History: En. Sec. 7, Ch. 693, L. 1979; amd. Sec. 2, Ch. 330, L. 1981; amd. Sec. 1, Ch. 352, L. 1981; amd. Sec. 61, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 330 deleted former subsection (1)(a) that read: "livestock, poultry, and unprocessed products of both".

Chapter 352 reduced the mileage limitation on telephone communications equipment that qualifies for class seven taxation from 1 ¼ to 1 circuit mile for each station in (2).

Chapter 575 substituted "noncentrally" for "centrally" in (1)(c).

Cross-References

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) motorcycles;

(e) watercraft;

(f) all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax;

(g) aircraft;

(h) all-terrain vehicles;

(i) harness, saddlery, and other tack equipment;

(j) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class; and

(k) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value.

History: En. Sec. 8, Ch. 693, L. 1979; amd. Sec. 62, Ch. 575, L. 1981; amd. Sec. 1, Ch. 278, L. 1983; amd. Sec. 1, Ch. 599, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 278 substituted language in (1)(f) for "light utility and boat trailers".

Chapter 599 inserted (1)(j).

1981 Amendment: In (1)(h), deleted "snowmobiles and" after "(h)".

Cross-References

Exemption for antique aircraft, 15-6-210.

Assessment of property, 15-8-111.

Prorated taxes on aircraft, 15-24-304.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Payment of tax on motorboats, 23-2-512.

Fee imposed in lieu of tax on snowmobiles, 23-2-615.1.

Taxation of aircraft, 67-3-201.

15-6-139. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) buses and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ½ tons;

(b) truck toppers weighing more than 300 pounds;

(c) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(d) x-ray and medical and dental equipment; and

(e) citizens' band radios and mobile telephones.

(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value.

History: En. Sec. 9, Ch. 693, L. 1979; amd. Sec. 63, Ch. 575, L. 1981; amd. Sec. 9, Ch. 614, L. 1981; amd. Sec. 2, Ch. 278, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (1)(b), which read: "stock trailers".

1981 Amendments: Chapter 575 deleted "camping, and travel" before "trailers" in (1)(b); deleted "campers and" before "toppers" and "except those included in class five" after "pounds" in (1)(b); and deleted "(d) motor homes except those included in class five".

Chapter 614 substituted (1)(a) for "automobiles, buses, and trucks weighing 1 ½ tons or less".

Cross-References

Reduced property tax rate for vehicle of disabled veteran, 10-2-301 through 10-2-304.

Assessment of property, 15-8-111.

Assessment, valuation, and taxable value of interstate fleets, 15-24-102.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Office equipment of fraternal benefit society subject to taxation, 33-7-407.

Payment of taxes on motor vehicles, 61-3-303, 61-3-501.

Sales tax on new motor vehicles — exemption from property taxation, 61-3-502.

Fee in lieu of property tax imposed on motor homes, travel trailers, and campers, 61-3-521.

15-6-140. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) coal and ore haulers;

(d) trucks having a rated capacity of more than 1 ½ tons, including those prorated under 15-24-102;

(e) all trailers exceeding 18,000 pounds maximum gross loaded weight, including those prorated under 15-24-102 and except those subject to a fee in lieu of property tax;

(f) theater projectors and sound equipment; and

(g) all other property not included in the preceding nine classes except that property subject to a fee in lieu of a property tax.

(2) Class ten property is taxed at 16% of its market value.

History: **En. Sec. 10, Ch. 693, L. 1979; amd. Sec. 64, Ch. 575, L. 1981; amd. Sec. 10, Ch. 614, L. 1981; amd. Sec. 3, Ch. 278, L. 1983.**

Compiler's Comments

1983 Amendment: In (1)(e), substituted "all trailers exceeding 18,000 pounds maximum gross loaded weight" for "trailers, except those included in class eight or nine".

1981 Amendments: Chapter 575 deleted subsection (1)(c) relating to centrally assessed utility allocations; in (1)(e), deleted "five" after "class" and inserted "and except those subject to a fee in lieu of a property tax"; in (1)(g), inserted "except that property subject to a fee in lieu of a property tax".

Chapter 614 substituted "trucks having a rated capacity of" for "trucks weighing" at the beginning of (1)(d).

Cross-References

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-141. *(Temporary)* **Class eleven property — description — taxable percentage.** (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations;

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five; and

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven.

(2) Class eleven property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) Except as provided in 15-23-202, property described in subsection (1)(c) is taxed at 15% of market value.

15-6-141. *(Effective as provided in Compiler's Comment)* **Class eleven property — description — taxable percentage.** (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations, including allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five; and

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven.

(2) Class eleven property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) Except as provided in 15-23-202, property described in subsection (1)(c) is taxed at 15% of market value.

History: En. Sec. 13, Ch. 686, L. 1979; amd. Sec. 1, Ch. 367, L. 1981; amd. Sec. 2, Ch. 478, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 367 inserted "Except as provided in 15-23-202" at the beginning of (2)(b).

Chapter 478 added the language relating to allocations of properties of public agencies to the end of (1)(a).

Effective Date — Contingent on Congressional Action: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electric energy."

Cross-References

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-142. Class twelve property — description — taxable percentage. (1) Class twelve property includes:

(a) a trailer or mobile home used as a residence except when:

(i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or

(ii) specifically included in another class;

(b) the first $35,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple.

(2) Class twelve property is taxed as follows:

(a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(b) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b) of 15-6-134.

History: En. Sec. 4, Ch. 632, L. 1983.

Cross-References

Initial assessment of class twelve property — when, 15-8-205.

15-6-143 through 15-6-150 reserved.

15-6-151. Application for certain class four classifications. (1) A person applying for classification of property described in subsection (1)(c) of 15-6-134 shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;
(b) his retirement benefits;
(c) his marital status;
(d) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and
(e) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible. The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time it considers necessary.

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

History: En. Sec. 12, Ch. 693, L. 1979; amd. Sec. 1, Ch. 101, L. 1981; amd. Sec. 65, Ch. 575, L. 1981; amd. Sec. 3, Ch. 632, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted reference to (1)(c) of 15-6-134 for (1)(d) to reflect amendment to that section.

1981 Amendments: Chapter 101 added the last three sentences in (2).

Chapter 575 deleted "subsection (1)(c) of 15-6-135 or" after "described in" in (1).

15-6-152. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five shall make application to the department of revenue on a form provided by the department.

(2) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction period. The maximum amount of prepayment shall be the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires.

History: En. Sec. 13, Ch. 693, L. 1979.

Cross-References

School district may impose additional requirements, 20-9-407.

Part 2

Tax Exempt Property

Part Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Suspension of property tax for persons in military service — application required, 10-1-606.

Reduced property tax rate for vehicle of disabled veteran, 10-2-301 through 10-2-304.

Injunction to prevent collection of tax on exempt property, 15-1-405.

Assessment of taxable improvements on tax-exempt land, 15-8-701.

Reduction of tax on improvements destroyed by natural disaster, 15-16-611.

Certain natural gas exempt, 15-23-612.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Effect of exemptions under MELDA, 15-24-1312.

Freight line company license tax in lieu of all other taxes, 15-55-102.

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

Sales tax on new motor vehicles — property tax exemption, 61-3-502.

Aircraft exempt from nonaircraft- or nonairport-related city tax levies, 67-3-201.

Exemptions applicable to condominium property, 70-23-702.

Exemption for property of conservation district, 76-15-404.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-6-201. *(Temporary)* **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and

(n) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. *(Effective as provided in Compiler's Comment)* **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and

(n) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

History: **En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1,**

Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(1), (3), (8); amd. Sec. 1, Ch. 508, L. 1979; amd. Sec. 1, Ch. 616, L. 1979; amd. Sec. 1, Ch. 639, L. 1979; amd. Sec. 21, Ch. 712, L. 1979; amd. Sec. 1, Ch. 478, L. 1981; amd. Sec. 11, Ch. 614, L. 1981; amd. Sec. 1, Ch. 170, L. 1983; amd. Sec. 2, Ch. 323, L. 1983; amd. Sec. 1, Ch. 523, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 170 inserted (1)(l).

Chapter 323 inserted (1)(m).

Chapter 523 inserted (1)(n).

1981 Amendments: Chapter 478 added the exception at the end of (1)(a)(i).

Chapter 614 added subsection (1)(k).

Effective Date — Contingent on Congressional Action: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electric energy."

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Taxation of state property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 12.

Privilege tax on gainful use of tax-exempt property, 15-24-1204 through 15-24-1206.

Federal sums in lieu of tax, Title 17, ch. 3, part 3.

Exemption of property in certain cities from county library tax, 22-1-313.

Exemption of cemetery association property, 35-20-217.

Exemption of mausoleum and columbarium authorities' property, 35-21-403.

Property acquired by municipality for airport purposes exempt, 67-10-406.

Property acquired by airport authority for airport purposes exempt, 67-11-306.

State land equalization payments, Title 77, ch. 1, part 5.

Land purchased from state or irrigation district subject to taxation, 77-2-313.

Reversion of land purchased from state exempt, 77-2-314.

Exemption for irrigation district property, 85-7-2011.

Yellowstone River Compact does not subject United States property to taxation, 85-20-101.

Payments in lieu of taxes to county for land owned by Department of Fish, Wildlife, and Parks, 87-1-603.

Certain industrial development projects not exempt, 90-5-110.

15-6-202. Freeport merchandise and business inventories exemption. (1) Freeport merchandise and business inventories are exempt from taxation.

(2) Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and which have acquired a taxable situs within the state.

(3) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(4) Any person or other group seeking to qualify its property for inclusion in the freeport merchandise class shall make application to the department of revenue in such manner or form as may be required by the department.

(5) "Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol.

C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(4); amd. Sec. 2, Ch. 613, L. 1981; amd. Sec. 3, Ch. 599, L. 1983.

Compiler's Comments

1983 Amendment: In (5), substituted present language for "Business inventories includes goods intended for sale or lease...".

1981 Amendment: In (1), substituted "and business inventories are exempt" for "is exempt"; in (4), substituted "the freeport merchandise class" for "this class"; and added subsection (5).

15-6-203. Veterans' clubhouse exemption — incompetent veterans' trusts. (1) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States military personnel is used exclusively for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(2).

Cross-References

Special considerations allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

Reduced property tax rate for vehicle of disabled veteran, 10-2-301 through 10-2-304.

15-6-204. Moneys and credits exemption. (1) Moneys and credits are exempt from taxation.

(2) Moneys and credits are hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined and all credits secured and unsecured, including all state, county, school district, and other municipal bonds, warrants, and securities, without any deduction or offset; provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.

History: (1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd.

Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. Sec. 1, Ch. 64, L. 1929; re-en. Sec. 2000.1, R.C.M. 1935; Sec. 84-303, R.C.M. 1947; R.C.M. 1947, 84-202(6), 84-303.

Cross-References

Definition of "credit", 15-1-101.

Money capital and shares of banks exempt, 15-31-703.

Definition of "school district", 20-15-403.

15-6-205. State water conservation projects exempt. All lands acquired and held by the department of natural resources and conservation or the state of Montana for use in connection with water conservation projects constructed or to be constructed under the laws of this state shall be exempt from taxation, and it shall be the duty of the county treasurer to cancel all taxes remaining unpaid against said land for the year in which same is so acquired and for all previous years, provided that such taxes shall be canceled only in such cases as no tax certificates shall have issued or a tax certificate has issued to the county and no assignment of such certificate of sale has been made by said county prior to the time when said land was acquired by said department.

History: En. Sec. 1, Ch. 114, L. 1937; R.C.M. 1947, 84-203.

15-6-206. Irrigation and drainage facilities — when exempt. (1) All irrigation and drainage facilities, including bonds, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, and other property of like character shall be taxed as like facilities of the federal and state government; in cases where property taxes apply and where an increase in land value results, such facilities shall be taxed as such land is improved and such land shall be classified for tax purposes as the tax classification law provides.

(2) Sprinkler irrigation systems are exempt from taxation. Such systems include all pipes, hoses, rollers, spray attachments, connectors, pumps, and other items integral to the functioning of a sprinkler irrigation system installed and used on a farm or ranch but exclude underground water distribution lines and other elements of the system sufficiently affixed to land that they become real property.

History: (1)En. Sec. 1, Ch. 193, L. 1965; R.C.M. 1947, 84-206; (2)En. Sec. 1, Ch. 695, L. 1979; MCA 1981, 15-6-212(2); redes. 15-6-206(2) by Code Commissioner, 1983.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Irrigation and drainage facilities — when exempt, 15-6-212.

Exemption for irrigation district property, 85-7-2011.

15-6-207. Agricultural exemptions. The following agricultural products are exempt from taxation:

(1) all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(2) all nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest; and

(3) livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month if assessed on the average inventory basis or on March 1 if assessed as provided in 15-24-911(1)(a) and swine which have not attained the age of 3 months as of January 1.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(5); amd. Sec. 8, Ch. 663, L. 1979.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Definition of "agricultural", 15-1-101.

15-6-208. Mineral exemptions. (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year shall be exempt from property taxation on one-half of the merchantable value.

History: (1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. 84-212 by Sec. 6, Ch. 498, L. 1977; Sec. 84-212, R.C.M. 1947; R.C.M. 1947, 84-202(7), 84-212; amd. Sec. 1, Ch. 303, L. 1983.

Compiler's Comments

1983 Amendment: In (1), increased amount of coal exempt from taxation from 20,000 tons to 50,000 tons.

15-6-209. Community services buildings exempt. (1) The building and appurtenant land, not exceeding 1 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (3) and (4), if such organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana;

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to such citizens or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of social and rehabilitation services; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.

(3) A building and lot exempted under this section shall be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or lot.

(4) The exemption provided under this section may not be extended to any property owned by a community service organization described herein which is leased in whole or in part to any person for business or profitmaking purposes.

History: En. 84-202.1 by Sec. 1, Ch. 491, L. 1977; R.C.M. 1947, 84-202.1; amd. Sec. 1, Ch. 423, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "1981" for "1976" in subsection (2).

15-6-210. Antique aircraft exempt — application procedure. (1) Aircraft 40 years old or older and not regularly used for transportation are exempt from property taxation.

(2) To apply for this exemption, the owner shall file a signed application with the department of revenue containing:

(a) the name and address of the owner;

(b) a description of the aircraft;

(c) a statement that the aircraft is not regularly used for transportation.

History: En Sec. 1, Ch. 229, L. 1979.

Cross-References

Aircraft exempt from nonaircraft- or nonairport-related city tax levies, 67-3-201.

15-6-211. Certain disabled veterans' residences exempt. (1) A residence, including the lot on which it is built, owned and occupied by a disabled veteran is exempt from property taxation under the following conditions. The owner must:

(a) have been honorably discharged from active service in any branch of the armed services;

(b) be rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor; and

(c) have an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000 for a single person and $18,000 for a married couple.

(2) If a veteran whose property has been eligible for this exemption dies, the property shall continue to be exempt so long as the surviving spouse:

(a) remains unmarried;

(b) is the owner and occupant of the house; and

(c) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000.

History: En. Sec. 11, Ch. 693, L. 1979; amd. Sec. 1, Ch. 590, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "adjusted gross income, as reported on the latest federal income tax return" for "income from all sources" in (1)(c); increased income limitations to $15,000 from $7,000 and $18,000 from $8,000 in (1)(c); substituted "has an annual adjusted gross income, as reported on the latest federal income tax return," for "has a total income from all sources" in (2)(c); and increased income limitation to $15,000 from $7,000 at the end of (2)(c).

Cross-References

Special consideration allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-6-212. Not Codified. Subsection (1) redundant with 15-6-206(1); (2) redesignated 15-6-206(2).

CHAPTER 7

APPRAISAL

Part 1 — General Methods

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15-7-401. Purpose.
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Chapter Cross-References

Taxation of condominium units, Title 70, ch. 23, part 7.

Part 1

General Methods

Part Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-7-101. Classification and appraisal — duties of the department of revenue. (1) It is the duty of the department of revenue to accomplish the following:

(a) the classification of all taxable lands;

(b) the appraisal of all taxable city and town lots;

(c) the appraisal of all taxable rural and urban improvements.

(2) A record thereof must be kept upon such maps, plats, and forms and entered in such books of record as may be prescribed by the department. Such maps, plats, forms, and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the department.

(3) It shall be the duty of the department to maintain current the classification of all taxable lands and appraisal of city and town lots and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977; R.C.M. 1947, 84-429.7(1).

Cross-References

Classifications of property subject to taxation, Title 15, ch. 6, part 1.

Taxation of property subject to a conservation easement, 76-6-208.

15-7-102. Notice of classification and appraisal to owners — appeals. (1) It shall be the duty of the department of revenue to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements thereon only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct appraisal and classification of such land or improvements and forthwith notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(3) Whether a hearing as provided in subsection (2) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(4) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make such records available for inspection during regular office hours.

(5) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973; R.C.M. 1947, 84-429.11; amd. Sec. 3, Ch. 710, L. 1979; amd. Sec. 1, Ch. 105, L. 1983; amd. Sec. 11, Ch. 526, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 105, at end of (1), inserted clause beginning "only if one or more of the following changes . . ." relating to certain changes and inserted (1)(a) through (1)(d).

Chapter 526, in (1), after "owner" inserted "and purchaser under contract for deed"; and after "land owned" inserted "or being purchased".

Cross-References

Notice of reclassification of property as nonagricultural, 15-7-208.

County Assessor as agent of the Department, 15-8-102.

County Tax Appeal Boards to be in session until 60 days after mailing of notices, 15-15-101.

15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1979, all property classified in [15-6-112] must be appraised on its market value in the same year. The department must publish a rule specifying the year used in the appraisal.

History: En. Sec. 6, Ch. 191, L. 1957; amd. Sec. 3, Ch. 512, L. 1973; amd. Sec. 5, Ch. 516, L. 1973; R.C.M. 1947, 84-429.12; amd. Sec. 1, Ch. 710, L. 1979; amd. Sec. 1, Ch. 32, L. 1983.

Compiler's Comments

1983 Amendment: In (3), substituted the language after "classified by" for "40-acre tracts or fractional lots".

15-7-104. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements under the provisions of Chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of present law.

History: En. Sec. 7, Ch. 191, L. 1957; R.C.M. 1947, 84-429.13.

15-7-105. Purpose. In order to produce more uniform appraisal of property throughout the state by encouraging technical training in the principles, methods, and techniques of appraising property and promoting a higher level of professionalism among appraisers, the legislature hereby establishes a system of instruction, examination, and certification for all appraisers.

History: En. Sec. 1, Ch. 602, L. 1979.

15-7-106. Courses of instruction, examination, and certification. (1) The department of revenue shall offer courses in the principles, methods, and techniques of appraising for property tax purposes property in three fields:

(a) residential property;

(b) agricultural land; and

(c) commercial and industrial property.

(2) Twice each year the department shall conduct an examination for those who have completed a course of instruction in any of the three fields listed in subsection (1).

(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields.

(4) No person may take the examination for appraising commercial and industrial property unless he holds a certificate in appraising residential property.

History: **En. Sec. 2, Ch. 602, L. 1979.**

15-7-107. Certification required. (1) Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later, any appraiser employed by the department to appraise:

(a) residential property must obtain a certificate in appraising residential property;

(b) agricultural land must obtain a certificate in appraising agricultural land; and

(c) commercial and industrial property must obtain a certificate in appraising commercial and industrial property.

(2) The department may promulgate rules requiring appraisers to complete continuing education courses in laws, rules, and methods relating to appraisal.

History: **En. Sec. 3, Ch. 602, L. 1979.**

15-7-108 through 15-7-110 reserved.

15-7-111. Periodic revaluation of taxable property. The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 5 years. A comprehensive written plan of rotation shall be promulgated by the department fixing the order of revaluation of property in each county on the basis of the last revaluation of taxable property in each county prior to July 1, 1974, in order to adjust the disparities therein between the counties. The plan of rotation so adopted shall provide that all property in each county shall be revalued at least every 5 years or that no less than 20% of the property in each county shall be revalued in each year. The department shall furnish a copy of the plan and all amendments thereto to each county assessor and the board of county commissioners in each county.

History: **En. 84-429.14 by Sec. 1, Ch. 294, L. 1975; R.C.M. 1947, 84-429.14.**

Compiler's Comments

Extension of Revaluation Cycle: Chapter 350, L. 1981, provided: "Section 1. Policy. It is the policy of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

Section 2. Purpose. (1) It is the purpose of this act to provide an additional 2 years for completion of the current revaluation cycle, implemented pursuant to 15-7-111 through 15-7-114, in order to permit the department of revenue to comply with the revaluation requirements of 15-7-111 through 15-7-114 in a manner that implements the policy provided for in section 1.

(2) This act serves to extend the current cycle only. It is intended that after the extended cycle, the department will implement the provisions of 15-7-111 through 15-7-114 and return to the 5-year cycle.

Section 3. Extension of current revaluation cycle. (1) Notwithstanding the provisions of 15-7-111 through 15-7-114, the current revaluation cycle, implementing 15-7-111, scheduled to end on December 31, 1983, and representing a 5-year period commencing January 1, 1979, is hereby extended for an additional 2 years, ending December 31, 1985. The new values determined during this period shall be placed on the tax rolls commencing January 1, 1986.

(2) It is not necessary for the department of revenue to commence another 5-year revaluation cycle pursuant to 15-7-111 until January 1, 1986.

(3) The extension provided for in subsection (1) does not affect the validity of any assessments made or to be made or any taxes levied or

to be levied during the period January 1, 1979, to December 31, 1985."

Cross-References
Effect on market value standard, 15-8-111.

15-7-112. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.
History: En. 84-429.15 by Sec. 2, Ch. 294, L. 1975; R.C.M. 1947, 84-429.15.

15-7-113. Program exclusive. No program for the revaluation of property shall be implemented for taxation in any county other than as prescribed in 15-7-111 through 15-7-114.
History: En. 84-429.16 by Sec. 3, Ch. 294, L. 1975; R.C.M. 1947, 84-429.16.

15-7-114. Law supplemental. Sections 15-7-111 through 15-7-114 are intended to be supplementary to and are not intended to repeal 15-7-103.
History: En. 84-429.17 by Sec. 4, Ch. 294, L. 1975; R.C.M. 1947, 84-429.17.

15-7-115 through 15-7-120 reserved.

15-7-121. Repealed. Sec. 27, Ch. 693, L. 1979.
History: En. 84-309 by Sec. 72, Ch. 566, L. 1977; R.C.M. 1947, 84-309.

15-7-122. Temporary authority to exceed mill levy limitations. Taxing jurisdictions may adopt and levy for a budget equal to 105% of the preceding year's budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105% of the preceding year's budget.
History: En. 84-310 by Sec. 73, Ch. 566, L. 1977; R.C.M. 1947, 84-310.

Part 2

Greenbelt Appraisal

Part Cross-References
Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.
Classification and taxable percentage of agricultural land, 15-6-133.
Assessment of agricultural land, 15-8-111.

15-7-201. *(Temporary)* **Legislative intent as to agricultural property.** Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

15-7-201. *(Effective January 1, 1986)* **Legislative intent — value of agricultural property.** (1) Since the market value of many agricultural properties is based upon speculative purchases which do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated.

(4) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values.

History: **En. Sec. 1, Ch. 512, L. 1973; R.C.M. 1947, 84-437.1; amd. Sec. 1, Ch. 644, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), in two places before "properties" substituted "agricultural" for "farm"; after "capability of" substituted "agricultural land" for "farms"; inserted (2) through (4). Effective January 1, 1986.

15-7-202. Eligibility of land for valuation as agricultural. (1) Land which is actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year it meets any of the following qualifications:

(a) the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is used for growing timber, or

(iv) it is in a cropland retirement program; or

(b) it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership; or

(c) it is used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms.

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

History: **En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974; amd. Sec. 1, Ch. 457, L. 1975; R.C.M. 1947, 84-437.2; amd. Sec. 1, Ch. 608, L. 1979; amd. Sec. 16, Ch. 693, L. 1979.**

Cross-References

Definition of "agricultural" and "poultry", 15-1-101.

15-7-203. Agricultural uses only considered in valuation. In valuing land as agricultural, the department of revenue shall consider only those indicia of value which such land has for agricultural use.

History: En. Sec. 5, Ch. 512, L. 1973; amd. Sec. 3, Ch. 56, L. 1974; R.C.M. 1947, 84-437.3.

15-7-204. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 6, Ch. 512, L. 1973; R.C.M. 1947, 84-437.4.

15-7-205. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 7, Ch. 512, L. 1973; amd. Sec. 4, Ch. 126, L. 1977; R.C.M. 1947, 84-437.5.

15-7-206. Improvements on agricultural land. In determining the total area of land actively devoted to agricultural use, there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses, and like structures, lakes, dams, ponds, streams, irrigation ditches, and like facilities.

History: En. Sec. 8, Ch. 512, L. 1973; amd. Sec. 2, Ch. 457, L. 1975; R.C.M. 1947, 84-437.6.

15-7-207. Continuance of valuation as agricultural land. Continuance of valuation, assessment, and taxation under this part shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this part and not upon continuance in the same owner of title to the land.

History: En. Sec. 10, Ch. 512, L. 1973; R.C.M. 1947, 84-437.8; amd. Sec. 3, Ch. 201, L. 1981.

Compiler's Comments

1981 Amendment: Deleted the last sentence of the section, which read: "Liability to the rollback tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use under the conditions prescribed in this part."

15-7-208. Reclassification by department. The department of revenue or its agent may reclassify land as nonagricultural upon giving due notice to the property owner or any purchaser under contract for deed under the provisions of 15-7-102. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department to reclassify the land as agricultural by completing a form prescribed by the department and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202.

History: En. 84-437.15 by Sec. 4, Ch. 56, L. 1974; R.C.M. 1947, 84-437.15; amd. Sec. 12, Ch. 526, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, after "owner" inserted "or any purchaser under contract for deed".

15-7-209. Reclassification by owner — lien. (1) Whenever land which is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor.

(2) The county assessor shall execute, in a form eligible for recording, releases of lien, for those liens attributable to the former rollback tax, and the assessor shall record the releases in the office of the clerk and recorder.

History: En. 84-437.16 by Sec. 5, Ch. 56, L. 1974; R.C.M. 1947, 84-437.16; amd. Sec. 1, Ch. 201, L. 1981; amd. Sec. 1, Ch. 423, L. 1981; amd. Sec. 1, Ch. 585, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 201 deleted "and the county assessor shall cause the following statement to be recorded by the county clerk and recorder: "On the .... day of ...., 19.., this land became subject to the rollback tax imposed by 15-7-204"" at the end of (1).

Chapter 585 added subsection (2).

15-7-210. Tax on change of use of part of tract. Separation or split-off of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other actions of the owner of such land, for a use other than agricultural shall subject the land so separated to reclassification by the department but shall not impair the right of the remaining land to continuance of valuation, assessment, and taxation hereunder, provided it meets the minimum requirements of this part.

History: **En. Sec. 11, Ch. 512, L. 1973; R.C.M. 1947, 84-437.9; amd. Sec. 4, Ch. 201, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "reclassification by the department" for "liability for the rollback tax applicable thereto".

15-7-211. Repealed. Sec. 6, Ch. 201, L. 1981.

History: **En. Sec. 12, Ch. 512, L. 1973; R.C.M. 1947, 84-437.10.**

15-7-212. Tract crossing county line — whole. Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

History: **En. Sec. 13, Ch. 512, L. 1973; R.C.M. 1947, 84-437.11.**

15-7-213. Factual details as to agricultural land on assessor's list to be consistent. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed, and taxed under this part shall be the same as those set forth by the assessor with respect to other taxable property in the county.

History: **En. Sec. 14, Ch. 512, L. 1973; R.C.M. 1947, 84-437.12.**

15-7-214. Repealed. Sec. 6, Ch. 201, L. 1981.

History: **En. Sec. 15, Ch. 512, L. 1973; R.C.M. 1947, 84-437.13.**

15-7-215. Repealed. Sec. 6, Ch. 201, L. 1981.

History: **En. Sec. 16, Ch. 512, L. 1973; R.C.M. 1947, 84-437.14; amd. Sec. 5, Ch. 581, L. 1979.**

15-7-216. Repealed. Sec. 2, Ch. 695, L. 1979.

History: **En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977; R.C.M. 1947, 84-429.7(2).**

Part 3

Realty Transfer Act

15-7-301. Short title. This part may be cited as the "Realty Transfer Act".

History: **En. 84-7301 by Sec. 1, Ch. 528, L. 1975; R.C.M. 1947, 84-7301.**

15-7-302. Purpose. The purpose of this part is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method.

History: **En. 84-7302 by Sec. 2, Ch. 528, L. 1975; R.C.M. 1947, 84-7302.**

15-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Partial interest" means a percentage interest in property when less than 100%.

(2) "Person" means and includes an individual, corporation, partnership, or other business organization, trust, fiduciary, or agent or any other party presenting a document for recordation.

(3) "Real estate" includes:

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

(4) "Transfer" means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

(5) "Value" means the amount of the full actual consideration therefor paid or to be paid, including the amount of any lien or liens thereon.

History: **En. 84-7303 by Sec. 3, Ch. 528, L. 1975; R.C.M. 1947, 84-7303.**

15-7-304. Report of transfers — change of ownership records. (1) All transfers of real property which are not evidenced by a recorded document, except those transfers otherwise provided for in this part, shall be reported to the department of revenue or its agent on the form prescribed.

(2) No agent of the department may change or be required to change any ownership records used for the assessment or taxation of real property unless he has received a transfer certificate from the clerk and recorder or a transfer has been reported to him.

History: **En. 84-7304 by Sec. 4, Ch. 528, L. 1975; R.C.M. 1947, 84-7304.**

15-7-305. Certificate of county clerk and recorder. (1) The county clerk and recorder shall cause to be executed by the parties to the transaction or their agents or representatives a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) No instrument or deed evidencing a transfer of real estate may be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed as between the parties to it shall not be affected by the failure to comply with the provisions in this part.

(3) The form of certificate shall be prescribed by the department of revenue, and the department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

(4) The clerk and recorder shall prepare a like certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department.

History: **En. 84-7305 by Sec. 5, Ch. 528, L. 1975; R.C.M. 1947, 84-7305.**

15-7-306. Rules. The department of revenue may prescribe such rules as are reasonably necessary to facilitate and expedite the provisions and administration of this part.

History: **En. 84-7306 by Sec. 6, Ch. 528, L. 1975; R.C.M. 1947, 84-7306.**

15-7-307. Certificate — exceptions. The certificate imposed by this part shall not apply to:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(4) an instrument which (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(5) a transfer pursuant to court decree;

(6) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(7) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(8) a transfer of decedents' estates;

(9) a transfer of a gift;

(10) a transfer between husband and wife or parent and child with only nominal actual consideration therefor;

(11) an instrument the effect of which is to transfer the property to the same party or parties;

(12) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;

(13) a transfer made in contemplation of death.

History: En. 84-7307 by Sec. 7, Ch. 528, L. 1975; R.C.M. 1947, 84-7307.

15-7-308. Disclosure of information restricted. The certificate required by this part and the information therein shall not be a public record and shall be held confidential by the county clerk and recorder, county assessor, and department of revenue. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The foregoing provisions shall not apply to compilations from such certificates or to summaries, analyses, and evaluations based upon such compilations.

History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

15-7-309. Classification or assessment methods. (1) This part shall not change or modify the methods of classification or assessment of real estate as provided for in this title or in any law of this state.

(2) The sale price of real estate shall not be the sole determinant of assessed value. The department shall consider, wherein the consideration is to be paid in deferred installments over a period of 10 years or more, the terms of the contract, amount of down payment, amount of each installment, rate of interest, and other covenants or exceptional circumstances which may affect the consideration paid for real estate.

History: En. 84-7309 by Sec. 9, Ch. 528, L. 1975; R.C.M. 1947, 84-7309.

15-7-310. Penalty. A person convicted of violating any provision of this part shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 84-7310 by Sec. 12, Ch. 528, L. 1975; R.C.M. 1947, 84-7310.

15-7-311. Costs. Notwithstanding 1-2-112, the duties, obligations, or responsibilities imposed on local government entities by this part are such that related costs are incurred as a part of their normal operating procedures.

History: En. 84-7311 by Sec. 10, Ch. 528, L. 1975; R.C.M. 1947, 84-7311.

Part 4

Appraisal of Residential Property in Areas of Changing Use

15-7-401. Purpose. The legislature finds that the rapid commercial and industrial growth in many Montana cities and towns is engulfing homes. Owners of these homes are often forced to pay higher property taxes upon these homes because their property is appraised on its industrial or commercial use. The legislature intends that houses and lots in these areas of changing use shall be appraised on their value as residential property.

History: En. Sec. 1, Ch. 702, L. 1979.

15-7-402. Application for residential appraisal of certain land and improvements. (1) Any person wishing to insure that his residential land and improvements are appraised as residential may file a signed application with the department of revenue or its agents.

(2) In the application, the owner must:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section shall not result in reclassification on real property unless there has been an actual change in use.

History: En. Sec. 2, Ch. 702, L. 1979.

15-7-403. Rollback tax — computation. (1) (a) If land and improvements appraised as residential as a result of an application filed under 15-7-402 are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property at the time of the change in use.

(b) As used in this section, "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The department's agent shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period.

History: **En. Sec. 3, Ch. 702, L. 1979.**

CHAPTER 8

ASSESSMENT PROCEDURE

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Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Taxation of condominium units, Title 70, ch. 23, part 7.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1

General Provisions

15-8-101. Department responsibilities. The department of revenue shall have full charge of assessing all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform its duties.

History: **En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; R.C.M. 1947, 84-402(2).**

Cross-References

Assessment of Department basis for taxation of cities and towns, 7-6-4409.

15-8-102. County assessor as agent of department — counties to furnish office space. (1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(2) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff, and the state appraiser and staff, if such space is reasonably available. If such space is not reasonably available in the courthouse and

the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.

(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund.

History: (1), (2)En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; (3)En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R.C.M. 1921; Cal. Pol. C. Sec. 3658; re-en. Sec. 2056, R.C.M. 1935; amd. Sec. 32, Ch. 405, L. 1973; Sec. 84-509, R.C.M. 1947; R.C.M. 1947, 84-402(1), (4), 84-509.

Cross-References

Agent required to submit form for state land equalization payment, 77-1-503.

Agent required to explain and determine if taxpayer wishes to be covered under crop hail insurance levy, 80-2-204.

Agent required to add irrigation district assessment to assessment book, 85-7-2136.

Agent required to add drainage district assessment to assessment book, 85-8-601.

15-8-103. Department to conduct assessing schools. The department of revenue shall schedule and hold area schools within the state for appraisers and assessors as often as it considers necessary. The costs of such appraisers and assessors attending shall be borne by the state. The department shall notify all assessors and appraisers at least 6 months before such school is scheduled. All assessors and appraisers shall attend.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part).

15-8-104. Department audit of taxable value — costs of audit paid by department. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The cost of the audit shall be paid by the department.

History: (1)En. 84-708.9 by Sec. 1, Ch. 235, L. 1975; amd. Sec. 1, Ch. 107, L. 1977; Sec. 84-708.9, R.C.M. 1947; (2)En. 84-708.10 by Sec. 2, Ch. 235, L. 1975; Sec. 84-708.10, R.C.M. 1947; R.C.M. 1947, 84-708.9, 84-708.10; amd. Sec. 1, Ch. 222, L. 1979; amd. Sec. 10, Ch. 634, L. 1979; amd. Sec. 3, Ch. 613, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "business inventories" after "gas wells"; and deleted subsections (2) and (3) relating to business inventories.

15-8-105 through 15-8-110 reserved.

15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in classes four through eleven is the percentage of market value established for each class of property in 15-6-134 through 15-6-141.

(5) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2), 15-6-132, and 15-6-133 for each class of property.

History: **En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R.C.M. 1921; Cal. Pol. C. Sec. 3627; re-en. Sec. 2001, R.C.M. 1935; amd. Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974; amd. Sec. 1, Ch. 209, L. 1975; amd. Sec. 1, Ch. 436, L. 1975; amd. Sec. 5, Ch. 498, L. 1977; amd. Sec. 21, Ch. 566, L. 1977; R.C.M. 1947, 84-401; amd. Sec. 11, Ch. 634, L. 1979; amd. Secs. 10, 13, Ch. 686, L. 1979; amd. Sec. 17, Ch. 693, L. 1979; amd. Sec. 66, Ch. 575, L. 1981; amd. Sec. 2, Ch. 578, L. 1981; amd. Sec. 3, Ch. 323, L. 1983.**

Compiler's Comments

1983 Amendment: Deleted references to subsections of 15-6-131 in (3), (4), (5), (5)(a), and (7).

1981 Amendments: Chapter 575 substituted "classes four through eleven" for "classes four through ten [class twenty, and class twenty-one]" in (4); deleted "[and 15-6-121]" at the end of (4); in (7), deleted "[and 15-6-120]" after "15-6-133".

Chapter 578 added subsection (2)(b).

Cross-References

Definition of assessed value, 15-1-101.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Taxation of land subject to conservation easement, 76-6-208.

15-8-112. Assessments to be made on classification and appraisal. (1) The assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department of revenue.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property which it is required to assess centrally under the laws of this state. The department shall transmit such determination and assignment to its agents in the various counties with the assessments so made, and its determination is final except as to the right of review in the state tax appeal board or the proper court.

History: (1)En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973; Sec. 84-429.9, R.C.M. 1947; (2)En. Sec. 3, Ch. 61, L. 1925; re-en. Sec. 2001.3, R.C.M. 1935; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973; amd. Sec. 8, Ch. 98, L. 1977; amd. Sec. 50, Ch. 566, L. 1977; Sec. 84-404, R.C.M. 1947; R.C.M. 1947, 84-404, 84-429.9.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-8-113. Appeal from percentage assignment. If any taxpayer shall feel aggrieved at the percentage assignment so made by the department of revenue or its agent, he shall have the right to appeal to the county tax appeal board on the percentage assignment the same as he now has on valuations and also the right to appeal from the county tax appeal board to the state tax appeal board, whose findings shall be final except as to the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925; re-en. Sec. 2001.2, R.C.M. 1935; amd. Sec. 3, Ch. 405, L. 1973; R.C.M. 1947, 84-403.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

15-8-114. Department to prepare blanks and rolls for assessor. It shall be made the duty of the department of revenue to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925; re-en. Sec. 2001.5, R.C.M. 1935; amd. Sec. 3, Ch. 516, L. 1973; R.C.M. 1947, 84-405.

15-8-115. Department to defend property tax appeals — costs and judgments. (1) The department of revenue or its designee is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the local county assessor.

(2) Costs, if any, shall be assessed against the department and not against a local taxing unit.

(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of

local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded.

History: **En. Sec. 1, Ch. 589, L. 1979; amd. Sec. 1, Ch. 398, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of (1), substituted "designee" for "agent".

Part 2

When Property Is Assessed

Part Cross-References

Owner of life estate under duty to pay taxes, 70-16-103.

Taxation of condominium units, Title 70, ch. 23, part 7.

15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(c) motor homes and travel trailers subject to a fee in lieu of property tax;

(d) livestock;

(e) property defined in 61-1-104(2) as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(f) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(3) Credits must be assessed as provided in 15-1-101(1)(c).

History: **En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(1) thru (3); amd. Sec. 1, Ch. 663, L. 1979; amd. Sec. 22, Ch. 712, L. 1979; amd. Sec. 12, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2)(b).

Cross-References

County Assessor as agent of the Department, 15-8-102.

Fee in lieu of tax on motor homes and travel trailers, 61-3-521.

Assessment of land purchased from state, 77-2-313.

15-8-202. Motor vehicle assessment. (1) (a) The department or its agent must, in each year, ascertain and assess all motor vehicles other than automobiles, trucks having a rated capacity of three-quarters of a ton or less, motor homes, travel trailers, or mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide. The motor vehicles shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(b) No tax may be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(c) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(d) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

(2) In all cases where taxes or a fee in lieu of tax were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes or the fee in lieu of tax if the taxes or fees have not been paid by a prior applicant or owner.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(4); amd. Sec. 23, Ch. 712, L. 1979; amd. Sec. 1, Ch. 262, L. 1981; amd. Sec. 13, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 262 inserted "The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automotive Dealers Association Official Used Car Guide." in the middle of (1)(a).

Chapter 614 inserted "automobiles, trucks having a rated capacity of three-quarters of a ton or less," after "ascertain and assess all motor vehicles other than" near the beginning of (1)(a); and inserted "subject to taxation" after "motor vehicles" twice in (1)(b).

Cross-References

Assessment of motor vehicles, 61-3-503.

Registration of foreign motor vehicles, Title 61, ch. 3, part 7.

Transportation of vehicles through the state, Title 61, ch. 4, part 3.

15-8-203. Repealed. Sec. 30, Ch. 712, L. 1979.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1,

Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(5).

15-8-204. Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the second Monday of July and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R.C.M. 1921; re-en. Sec. 2035, R.C.M. 1935; amd. Sec. 20, Ch. 405, L. 1973; R.C.M. 1947, 84-441.

15-8-205. Initial assessment of class twelve property — when. The county assessor shall assess all class twelve property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana.

History: En. Sec. 5, Ch. 632, L. 1983.

Cross-References

Class twelve property — description — taxable percentage, 15-6-142.

Part 3

How Property Is Assessed

15-8-301. Statement — what to contain. (1) The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person or in his possession or under his control at midnight on January 1. Such statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of such person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent;

(d) the county in which such property is situated or in which it is liable to taxation and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated;

(e) an exact description of all lands in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government; improvements and personal property, including all vessels, steamers, and other watercraft; all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby;

(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent;

(g) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer need not include such property in the statement made by him but this statement must show the name of the person or officer who made the statement in which such property is included.

(3) The fact that such statement is not required or that a person has not made such statement, under oath or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R.C.M. 1921; Cal. Pol. C. Sec. 3629; re-en. Sec. 2003, R.C.M. 1935; amd. Sec. 5, Ch. 405, L. 1973; amd. Sec. 9, Ch. 388, L. 1975; R.C.M. 1947, 84-409.

Cross-References

Notice required if Department revises statement valuation, 15-8-601.

Business inventory reporting, 15-24-403.

15-8-302. Department of revenue to furnish blank forms. (1) The department of revenue must furnish its agents with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit which must be substantially as follows: "I, ..., do swear that I am a resident of the county of .... (naming it) and that my post-office address is ....; that the above list contains a full and correct statement of all property subject to taxation which I or any firm of which I am a member or any corporation, association, or company of which I am president, cashier, secretary, or managing agent owned, claimed, possessed, or controlled at midnight on January 1 last and which is not already assessed this year; that I have not in any manner whatsoever transferred or disposed of any property or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others."

(2) The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation and in other respects must conform substantially to the preceding form.

(3) The time when taxes become delinquent and the time of the meeting of the county tax appeal board must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R.C.M. 1921; Cal. Pol. C. Sec. 3630; re-en. Sec. 2004, R.C.M. 1935; amd. Sec. 6, Ch. 405, L. 1973; amd. Sec. 10, Ch. 388, L. 1975; R.C.M. 1947, 84-410.

15-8-303. Statement to be completed and returned to department's agent. The agent of the department of revenue may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The agent must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by the agent.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R.C.M. 1921; Cal. Pol. C. Sec. 3631; re-en. Sec. 2005, R.C.M. 1935; amd. Sec. 7, Ch. 405, L. 1973; R.C.M. 1947, 84-411.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-8-304. Enforcement powers of department. (1) The department of revenue has power to:

(a) require any person in the state to make and subscribe an affidavit, giving his name and place of residence and post-office address;

(b) subpoena and examine any person in relation to any statement furnished to it or which discloses property which is assessable in the state.

(2) The department may exercise this power in any county where the person whom it desires to examine may be found but has no power to require such person to appear before it in any other county than that in which the subpoena is served.

(3) In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part).

15-8-305. Method of making assessment upon refusal of statement. If any person, after demand made by the department of revenue, neglects or refuses to give, under oath, the statement herein provided for or to comply with the other requirements of this title, the department must note the refusal on the assessment book opposite his name and must make an estimate of the value of the property of such person, and the value so fixed by the department must not be reduced by the county tax appeal board.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R.C.M. 1921; Cal. Pol. C. Sec. 3633; re-en. Sec. 2007, R.C.M. 1935; amd. Sec. 9, Ch. 405, L. 1973; R.C.M. 1947, 84-413.

Cross-References

County Clerk to follow directions of County Tax Appeal Board, 15-10-304.

15-8-306. Property concealed or misrepresented. Upon discovery, any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation must be assessed at not exceeding 10 times its value, and the assessment so made must not be reduced by the county tax appeal board.

History: En. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R.C.M. 1921; Cal. Pol. C. Sec. 3648; re-en. Sec. 2033, R.C.M. 1935; amd. Sec. 18, Ch. 405, L. 1973; R.C.M. 1947, 84-439.

Cross-References

Applicable to horses taken in roundup, 81-4-511.

15-8-307. Land assessment. (1) Land must be assessed in parcels or subdivisions not exceeding 640 acres, and tracts of land containing more than 640 acres which have been sectionized by the United States government must be assessed by sections or fractions of sections.

(2) The department of revenue or its agent must set aside one line in the assessment book for the description of each 640 acres of land or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. It must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column and the value of the lot and any improvements thereon in another column, except that a lot and improvements thereon shall be separately assessed when required under 15-8-111; provided that all of the unimproved lots of the same value, situate in one block or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line and opposite the description thereof the total value of the same and any improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part).

15-8-308. Assessment not illegal for informality or delay. No assessment or act relating to assessment or collection of taxes is illegal on account of informality or because the same was not completed within the time required by law.

History: En. Sec. 4014, Pol. C. 1895; re-en. Sec. 2732, Rev. C. 1907; re-en. Sec. 2036, R.C.M. 1921; re-en. Sec. 2036, R.C.M. 1935; Cal. Pol. C. Sec. 3885; R.C.M. 1947, 84-442.

15-8-309. Violation and penalty. (1) Every person who refuses to furnish the statement hereinbefore required or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of $100 to be recovered by action brought in the name of the state in any city or justice's court.

(2) All moneys recovered under the provisions of this section must be paid into the treasury of the county in which the property is located.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part).

Part 4

Where Property Is Assessed

15-8-401. Consigned property. All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

History: En. Sec. 21, p. 82, L. 1891; re-en. Sec. 3709, Pol. C. 1895; re-en. Sec. 2519, Rev. C. 1907; re-en. Sec. 2011, R.C.M. 1921; Cal. Pol. C. Sec. 3638; re-en. Sec. 2011, R.C.M. 1935; R.C.M. 1947, 84-417.

15-8-402. Property of a firm or corporation. The property of every firm and corporation must be assessed in the county where the property is situate and must be assessed in the name of the firm or corporation.

History: En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907; re-en. Sec. 2013, R.C.M. 1921; Cal. Pol. C. Sec. 3641; re-en. 2013, R.C.M. 1935; R.C.M. 1947, 84-419.

15-8-403. Capital stock and franchises of corporations. The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

History: En. Sec. 3713, Pol. C. 1895; re-en. Sec. 2523, Rev. C. 1907; re-en. Sec. 2015, R.C.M. 1921; re-en. Sec. 2015, R.C.M. 1935; R.C.M. 1947, 84-421.

15-8-404. Property of particular types of firms. (1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

(2) The personal property of express, transportation, and stage companies, steamboats, vessels, and other watercraft must be listed and assessed in the county, town, or district where such property is usually kept.

(3) The personal property and franchises of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located. Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

History: En. Secs. 25, 26, 27, 28, p. 83, L. 1891; re-en. Secs. 3714, 3715, 3716, 3717, Pol. C. 1895; re-en. Secs. 2524, 2525, 2526, 2527, Rev. C. 1907; re-en. Secs. 2016, 2017, 2018, 2019, R.C.M. 1921; re-en. Secs. 2016, 2017, 2018, 2019, R.C.M. 1935; R.C.M. 1947, 84-422, 84-423, 84-424, 84-425.

15-8-405. Street railroads, bridges, and ferries. Street railroads and bridges and ferries and their franchises owned by persons or corporations must be listed and assessed in the county, town, or district where such property or any portion thereof is located, and the track of the railroad and the bridge are personal property.

History: En. Sec. 29, p. 83, L. 1891; re-en. Sec. 3718, Pol. C. 1895; re-en. Sec. 2528, Rev. C. 1907; re-en. Sec. 2020, R.C.M. 1921; re-en. Sec. 2020, R.C.M. 1935; R.C.M. 1947, 84-426.

15-8-406. Assessment of public utilities in one county. Railroads operated or situated in one county; telegraph, telephone, and electric light lines and similar properties situated in one county and their franchises; and canals, ditches, and flumes situated in one county and the franchises of the same must be listed and assessed in the county in which such property is located, and the department of revenue must require the owner of such property or his agent or any officer of a corporation owning the same to make a verified statement containing a list of the number of miles such property is operated or situated in the county and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R.C.M. 1921; re-en. Sec. 2021, R.C.M. 1935; amd. Sec. 12, Ch. 405, L. 1973; R.C.M. 1947, 84-427.

Cross-References

Central assessment of public utilities, Title 15, ch. 23, part 3.

15-8-407. Railroads and other franchises. (1) The franchise, roadway, roadbed, rails, rolling stock, and all other operating property of all railroads operated in more than one county or more than one state must be assessed by the department of revenue as hereinafter provided.

(2) Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2022, R.C.M. 1935; amd. Sec. 4, Ch. 516, L. 1973; R.C.M. 1947, 84-428; amd. Sec. 3, Ch. 686, L. 1979.

Cross-References

Central assessment of railroads, Title 15, ch. 23, part 2.

15-8-408. Personal property. Personal property which was in the state and subject to taxation on January 1 of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming, or possessing it on January 1 or not; provided that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes.

History: En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part).

Cross-References

Definition of "personal property", 15-1-101.

Migratory personal property, Title 15, ch. 24, part 3.

15-8-409. Property not otherwise specified. All other taxable property must be assessed in the county, city, or district in which it is situated.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part).

Part 5

To Whom Property Is Assessed

Part Cross-References

Owner of life estate under duty to pay taxes, 70-16-103.

Taxation of condominium units, Title 70, ch. 23, part 7.

15-8-501. Assessment of unknown or absent owners. (1) If the owner or claimant of any property not listed by another person is absent or unknown, the department must make an estimate of the value of such property.

(2) If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Secs. 19, 20, p. 82, L. 1891; re-en. Secs. 3706, 3707, Pol. C. 1895; re-en. Secs. 2516, 2517, Rev. C. 1907; re-en. Secs. 2008, 2009, R.C.M. 1921; Cal. Pol. C. Secs. 3635, 3636; re-en. Secs. 2008, 2009, R.C.M. 1935; amd. Secs. 10, 11, Ch. 405, L. 1973; R.C.M. 1947, 84-414, 84-415.

15-8-502. Representative status to be designated. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name and the assessment entered on a separate line from his individual assessment.

History: En. Sec. 22, p. 82, L. 1891; re-en. Sec. 3710, Pol. C. 1895; re-en. Sec. 2520, Rev. C. 1907; re-en. Sec. 2012, R.C.M. 1921; Cal. Pol. C. Sec. 3639; re-en. Sec. 2012, R.C.M. 1935; R.C.M. 1947, 84-418.

15-8-503. Undistributed property of deceased persons. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

History: En. Sec. 24, p. 82, L. 1891; re-en. Sec. 3712, Pol. C. 1895; re-en. Sec. 2522, Rev. C. 1907; re-en. Sec. 2014, R.C.M. 1921; Cal. Pol. C. Sec. 3642; re-en. Sec. 2014, R.C.M. 1935; R.C.M. 1947, 84-420.

15-8-504. Property and money in litigation. Money and property in litigation in possession of a county treasurer or of a court or a clerk thereof or receiver must be assessed to such treasurer, clerk, or receiver and the taxes paid thereon under the direction of the court.

History: En. Sec. 32, p. 84, L. 1891; re-en. Sec. 3721, Pol. C. 1895; re-en. Sec. 2540, Rev. C. 1907; re-en. Sec. 2032, R.C.M. 1921; Cal. Pol. C. Sec. 3647; re-en. Sec. 2032, R.C.M. 1935; R.C.M. 1947, 84-438.

Part 6

Assessment Revision

15-8-601. Assessment revision — conference for review. (1) Whenever the department of revenue discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the same provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section.

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. The notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment review conference, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting.

(4) The department must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department.

History: (1) thru (3), (5)En. Sec. 11, Ch. 3, L. 1923; re-en. Sec. 2122.11, R.C.M. 1935; amd. Sec. 56, Ch. 405, L. 1973; amd. Sec. 4, Ch. 155, L. 1977; Sec. 84-711, R.C.M. 1947; (4)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R.C.M. 1921; Cal. Pol. C. Sec. 3682; re-en. Sec. 2121, R.C.M. 1935; amd. Sec. 44, Ch. 405, L. 1973; Sec. 84-610, R.C.M. 1947; R.C.M. 1947, 84-610, 84-711.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Failure to file report on centrally assessed property, 15-23-104.

Transmission of statement of revised assessment of centrally assessed property, 15-23-107.

Part 7

Assessment and Map Books

15-8-701. Assessment book — listing property in. (1) The form of the assessment book must be as directed by the department of revenue.

(2) The department must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state and in which must be specified, in separate columns under the appropriate head:

(a) the name of the person to whom the property is assessed;

(b) land, by township, range, section or fractional section, and when such land is not a United States land division or subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract 640 acres, locality, and the improvements thereon;

(c) city and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon;

(d) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;

(e) the assessed value of real estate other than city or town lots;

(f) the assessed value of city and town lots with improvements thereon, except that a lot and improvements thereon shall be separately listed when required under 15-8-111;

(g) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by a person, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, may be assessed against the exempt land, nor under any circumstances may the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

(h) the assessed value of all taxable personal property;

(i) the school, road, and other revenue districts in which each piece of property assessed is situated;

(j) the total assessed value of all property.

History: (1)En. 84-502.1 by Sec. 27, Ch. 405, L. 1973; Sec, 84-502.1, R.C.M. 1947; (2)En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R.C.M. 1921; Cal. Pol. C. Sec. 3650; re-en. Sec. 2048, R.C.M. 1935; amd. Sec. 26, Ch. 405, L. 1973; amd. Sec. 2, Ch. 209, 1975; amd. Sec. 3, Ch. 436, L. 1975; amd. Sec. 5, Ch. 126, L. 1977; Sec. 84-501, R.C.M. 1947; R.C.M. 1947, 84-501, 84-502.1.

Cross-References

Book to show property situated in cities and towns, 7-6-4409.

Tax-exempt property, Title 15, ch. 6, part 2.

Irrigation district assessments added to book, 85-7-2136.

Drainage district assessments added to book, 85-8-601.

15-8-702. Persons desiring to be listed. (1) Lands once described on the assessment book need not be described a second time, but any person claiming the same and desiring to be assessed therefor may have his name inserted with that of the person to whom such land is assessed.

(2) When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists.

History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907; re-en. Sec. 2055, R.C.M. 1921; Cal. Pol. C. Sec. 3657; re-en. Sec. 2055, R.C.M. 1935; amd. Sec. 1, Ch. 283, L. 1975; R.C.M. 1947, 84-508.

15-8-703. Use of duplicate assessment book. (1) The board of county commissioners of any county may in its discretion dispense with the making or use of any duplicate assessment book mentioned in any part of this code, and in all cases where said duplicate assessment book is referred to, it is lawful to use and consider the original assessment book in all the requirements of every part of this code referring to the same. All affidavits or other statements in reference to said duplicate assessment book must be substantially worded to conform to the use of the original assessment book.

(2) The department of revenue may, by an order certified to the county clerk and recorder of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices of such duplicate and must have like force and effect.

History: (1)En. Sec. 3851, Pol. C. 1895; re-en. Sec. 2615, Rev. C. 1907; re-en. Sec. 2167, R.C.M. 1921; re-en. Sec. 2167, R.C.M. 1935; Sec. 84-4012, R.C.M. 1947; (2)En. Sec. 4019, Pol. C. 1895;

re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R.C.M. 1921; re-en. Sec. 2168, R.C.M. 1935; amd. Sec. 81, Ch. 405, L. 1973; Sec. 84-4013, R.C.M. 1947; R.C.M. 1947, 84-4012, 84-4013.

15-8-704. Map book. The department of revenue must make a plat of the various blocks within any incorporated city or town in a map book and mark thereon in each subdivision the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R.C.M. 1921; re-en. Sec. 2051, R.C.M. 1935; amd. Sec. 28, Ch. 405, L. 1973; R.C.M. 1947, 84-504.

15-8-705. Assessment and map book delivered to and kept by clerk. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof and of the time the county tax appeal board will meet to consider protests concerning assessments, by publication in a newspaper if any is printed in the county, if none, then in such manner as the board may direct. In the meantime, the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R.C.M. 1921; Cal. Pol. C. Sec. 3654; re-en. Sec. 2052, R.C.M. 1935; amd. Sec. 29, Ch. 405, L. 1973; R.C.M. 1947, 84-505.

Cross-References

Delivery to certain municipalities upon request, 7-6-4410.

Addition of valuations required prior to delivery to County Clerk and Recorder, 15-10-301.

Delivery to County Superintendent of Schools and City or Town Clerk showing assessed value and taxable value within each district and city or town, 20-9-122.

15-8-706. Statement by agent to the department. (1) On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the department a statement showing:

(a) the several kinds of personal property;

(b) the average and total value of each kind;

(c) the number of livestock, number of bushels of grain, number of pounds or tons of any article sold by the pound or ton;

(d) when practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

(2) An agent of the department who purposely or negligently fails to perform his duty under this section or a deputy or member of the agent's staff delegated such duty who purposely or negligently fails to perform such duty is guilty of official misconduct under 45-7-401.

History: (1)En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R.C.M. 1921; Cal. Pol. C. Sec. 3655; re-en. Sec. 2053, R.C.M. 1935; amd. Sec. 30, Ch. 405, L. 1973; Sec. 84-506, R.C.M. 1947; (2)En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R.C.M. 1921; Cal. Pol. C. Sec. 3656; re-en. Sec. 2054, R.C.M. 1935; amd. Sec. 31, Ch. 405, L. 1973; Sec. 84-507, R.C.M. 1947; R.C.M. 1947, 84-506, 84-507; amd. Sec. 1, Ch. 225, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present (2) for former (2), which read: "Every agent of the department who fails to complete his assessment book or who fails to transmit the statement to the department forfeits the sum of $1,000 for the use of the department, to be recovered on his official bond or to be deducted from his salary by the director of revenue."

Cross-References

Fine not to be paid to the county, 15-1-105.

County Assessor as agent of Department, 15-8-102.

15-8-707. Correction of defects in form of assessment book. (1) At any time after the original assessment is made and prior to a sale for delinquent taxes, omissions, errors, or defects in form in any original or duplicate assessment book may be corrected by the:

(a) department of revenue or its agent; or

(b) county assessor or county treasurer with verification from the department.

(2) If the correction involves an assessment of property that is the subject of pending litigation, the consent of the county attorney must be obtained before any correction may be made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R.C.M. 1921; Cal. Pol. C. Sec. 3881; re-en. Sec. 2058, R.C.M. 1935; amd. Sec. 34, Ch. 405, L. 1973; R.C.M. 1947, 84-511; amd. Sec. 1, Ch. 477, L. 1979.

Cross-References

County Assessor as agent of Department, 15-8-102.

15-8-708. Omissions in delinquent lists — correction by publication. (1) When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended or notice of the correction may be given in a supplementary publication.

(2) The publication must be made in the same manner as the original publication and for not less than 1 week.

History: (1)En. Sec. 194, p. 127, L. 1891; re-en. Sec. 4011, Pol. C. 1895; re-en. Sec. 2729, Rev. C. 1907; re-en. Sec. 2059, R.C.M. 1921; Cal. Pol. C. Sec. 3882; re-en. Sec. 2059, R.C.M. 1935; Sec. 84-512, R.C.M. 1947; (2)En. Sec. 195, p. 127, L. 1891; re-en. Sec. 4012, Pol. C. 1895; re-en. Sec. 2730, Rev. C. 1907; re-en. Sec. 2060, R.C.M. 1921; Cal. Pol. C. Sec. 3883; re-en. Sec. 2060, R.C.M. 1935; Sec. 84-513, R.C.M. 1947; R.C.M. 1947, 84-512, 84-513.

15-8-709. Statement of changes to be sent to county clerk. The department of revenue shall transmit to each county clerk a statement of the changes made by the department in the assessment book of the county or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the department resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923; re-en. Sec. 2122.12, R.C.M. 1935; amd. Sec. 57, Ch. 405, L. 1973; R.C.M. 1947, 84-712.

15-8-710. Assessment and delinquent books prima facie evidence. The assessment book, duplicate assessment book, or delinquent list or a copy thereof certified by the county clerk and recorder showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with.

History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. 1907; re-en. Sec. 2216, R.C.M. 1921; Cal. Pol. C. Sec. 3789; re-en. Sec. 2216, R.C.M. 1935; R.C.M. 1947, 84-4171.

CHAPTER 9

EQUALIZATION

Part 1 — General Provisions

Section

15-9-101. Department to equalize valuations — hearing.
15-9-102. Agent to be present — statement of property not assessed.

15-9-103. Department to use records in equalizing.

Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Part 1

General Provisions

Part Cross-References

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-9-101. Department to equalize valuations — hearing. (1) The department of revenue shall adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(2) The department may hold a public hearing to determine the value of any class of property in any county and shall have authority to raise or lower the value of any class of property on the basis of testimony adduced at such hearing.

(3) Upon the hearing of the application, the department may subpoena such witnesses, hear and take such evidence in relation to the subject pending as in its discretion it may deem proper.

History: (1)En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; Sec. 84-708.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 187, L. 1933; re-en. Sec. 2116.1, R.C.M. 1935; amd. Sec. 40, Ch. 405, L. 1973; Sec. 84-605, R.C.M. 1947; (3)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R.C.M. 1921; Cal. Pol. C. Sec. 3676; re-en. Sec. 2117, R.C.M. 1935; amd. Sec. 6, Ch. 516, L. 1973; Sec. 84-606, R.C.M. 1947; R.C.M. 1947, 84-605, 84-606, 84-708.1(3).

Cross-References

Applicable to assessment of property in cities and towns, 7-6-4411.

County Assessor as agent of Department, 15-8-102.

15-9-102. Agent to be present — statement of property not assessed. During the hearing of the department, the agent of the state who assessed the property whose testimony is needed must be present and may make any statement or introduce and examine witnesses on questions before the department and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of the property under consideration at the hearing and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of any comparable property in the vicinity of the property under consideration at the hearing. At the meeting the agent shall present to the department a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value. Thereupon it shall be the duty of the department immediately to investigate the statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, the department shall order the agent to correct such assessment in the manner provided for the correction of assessments by the department.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R.C.M. 1921; Cal. Pol. C. Sec. 3677; re-en. Sec. 2118, R.C.M. 1935; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973; R.C.M. 1947, 84-607.

Cross-References

County Assessor as agent of the Department, 15-8-102.

Assessment revision, Title 15, ch. 8, part 6.

15-9-103. Department to use records in equalizing. The department of revenue must use the abstract and all other information it may gain from the records of the county clerk or elsewhere in equalizing the assessment of the property of each county and may require entry upon the assessment book of any property which has not been assessed. Any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R.C.M. 1921; Cal. Pol. C. Sec. 3679; re-en. Sec. 2119, R.C.M. 1935; amd. Sec. 42, Ch. 405, L. 1973; R.C.M. 1947, 84-608.

CHAPTER 10

PROPERTY TAX LEVIES

Part 1 — Statewide Levies

Section
15-10-101. Levy to balance budget.
15-10-102. Department to compute budget levy.
15-10-103. Statewide levy for school purposes.
15-10-104. Failure of county commissioners to levy.
15-10-105. Tax levy for the university system.

Part 2 — Statement of Levies

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills.
15-10-202. Certification of taxable values and millage rates.
15-10-203. Increase of tax revenue — notice of intention required.
15-10-204. Resolution or ordinance for increase over certified millage.
15-10-205. Approval and copies of resolution or ordinance.
15-10-206. Exceptions for decisions of tax appeal boards.
15-10-207. Additional millage increase — new notice required.
15-10-208. Increase over legal maximum not authorized — reductions permitted.

Part 3 — Entry of Taxes

15-10-301. Department to enter valuations.
15-10-302. County clerk — duplicate statement.

15-10-303. Statement to be transmitted to state auditor and department of revenue.
15-10-304. County clerk and recorder to follow directions of department, county or state tax appeal boards.
15-10-305. Department to compute and enter taxes — affidavit.
15-10-306. County clerk and recorder to attach affidavit to book.
15-10-307. Clerk and recorder to deliver book to treasurer.
15-10-308. Transfer of assessment book to new treasurer.
15-10-309 through 15-10-320 reserved.
15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions.

Chapter Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Part 1

Statewide Levies

Part Cross-References

Statewide levy on livestock for enforcement of stock laws, 15-24-921 through 15-24-925.

Disposal of federal money received in lieu of taxes, 17-3-305.

Statewide levy on livestock for predator control, 81-7-104, 81-7-118.

Privilege and license tax on operators and producers of oil and gas, 82-11-131.

15-10-101. Levy to balance budget. There must be levied at each session of the legislature upon all property in the state liable to taxation a sufficient sum to realize the amount necessary to meet the appropriations made for the 2 succeeding fiscal years and for the payment of deficiencies if any have occurred in the previous fiscal year or years. Such levy must be made for each fiscal year separately and must not exceed 2 ½ mills on each dollar of valuation. The fiscal year commences on July 1.

History: En. Sec. 80, p. 104, L. 1891; amd. Sec. 3820, Pol. C. 1895; re-en. Sec. 2593, Rev. C. 1907; re-en. Sec. 2147, R.C.M. 1921; re-en. Sec. 2147, R.C.M. 1935; R.C.M. 1947, 84-3801.

Cross-References

Balanced budget, Art VIII, sec. 9, Mont. Const.

15-10-102. Department to compute budget levy. The department of revenue must, for state purposes for each fiscal year, fix an ad valorem rate of taxation upon each $100 of taxable property of the state, after allowing 6% for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislature for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R.C.M. 1921; Cal. Pol. C. Sec. 3713; re-en. Sec. 2149, R.C.M. 1935; amd. Sec. 147, Ch. 516, L. 1973; amd. Sec. 2, Ch. 345, L. 1977; R.C.M. 1947, 84-3803.

15-10-103. Statewide levy for school purposes. There must be levied by the legislature at the time other state taxes are levied a tax of such number of cents of each $100 value of taxable property in the state as will produce a net sum equal to the amount reported to them by the state auditor or as may be otherwise ascertained as being necessary to be raised by an ad valorem tax for school purposes, and the assessment and collection of said tax must be performed in the same manner and at the same time as the other state taxes are assessed and collected.

History: En. Sec. 84, p. 105, L. 1891; re-en. Sec. 3830, Pol. C. 1895; re-en. Sec. 2603, Rev. C. 1907; re-en. Sec. 2155, R.C.M. 1921; Cal. Pol. C. Sec. 3719; re-en. Sec. 2155, R.C.M. 1935; R.C.M. 1947, 84-3810.

Cross-References

State levy for deficiency in equalization level, 20-9-351.

State levy for permissive levy deficiency, 20-9-352.

15-10-104. Failure of county commissioners to levy. The action of the department of revenue in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed and imposes upon the county commissioners and all other officers charged with the performance of any duties under the revenue law the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R.C.M. 1921; Cal. Pol. C. Sec. 3715; re-en. Sec. 2151, R.C.M. 1935; amd. Sec. 148, Ch. 516, L. 1973; R.C.M. 1947, 84-3806.

15-10-105. Tax levy for the university system. There is levied upon the taxable value of all real and personal property in the state of Montana, subject to taxation, 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision, as provided in referendum measure No. 75 passed by vote of the people at the general election held November 7, 1978; and the funds raised therefrom shall be deposited in the state special revenue fund.

History: En. Sec. 1, Ch. 582, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

Termination Date: Sec. 2, Ch. 582, L. 1979, provided: "This act terminates on January 1, 1989."

Cross-References

Legislature to levy tax for university purposes, 20-25-423.

Part 2

Statement of Levies

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills. Every board of county commissioners, city or town council or commission, and every other board or commission authorized by law to make or fix tax levies for any purpose shall make and fix every such levy in mills and tenths and hundredths of mills.

History: En. Sec. 1, Ch. 123, L. 1935; re-en. Sec. 2148.1, R.C.M. 1935; R.C.M. 1947, 84-3802.

Cross-References

Fixing of county tax levy, 7-6-2321.

Fixing of municipal tax levy, 7-6-4232.

15-10-202. Certification of taxable values and millage rates. At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

History: **En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202.**

15-10-203. Increase of tax revenue — notice of intention required. No taxing authority may budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it gives notice of its intention to do so at the same time and in the same manner that it gives notice of its hearing on its preliminary budget for the forthcoming fiscal year.

History: **En. 84-7203 by Sec. 3, Ch. 286, L. 1974; R.C.M. 1947, 84-7203; amd. Sec. 6, Ch. 581, L. 1979.**

15-10-204. Resolution or ordinance for increase over certified millage. No millage in excess of the department of revenue's certified millage may be levied until a resolution or ordinance is approved by the governing board of the taxing authority, which resolution or ordinance must be approved by the taxing authority according to the following procedure:

(1) The taxing authority shall publish notice of its intent to exceed the department's certified millage in the same manner that it gives notice of hearings on its preliminary budget for the forthcoming fiscal year. The notice must state that the taxing authority will meet on a day, at a time and place fixed in the notice, which must be approximately 7 days after the day that the notice is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the above procedures, the taxing authority may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting such millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority must again publish notice in the same manner as provided in subsection (1).

History: **En. 84-7204 by Sec. 4, Ch. 286, L. 1974; amd. Sec. 2, Ch. 354, L. 1977; R.C.M. 1947, 84-7204; amd. Sec. 7, Ch. 581, L. 1979.**

15-10-205. Approval and copies of resolution or ordinance. The resolution or ordinance approved in the manner provided for in this part shall be forwarded to the assessor, treasurer, and the department of revenue. No millage in excess of the department's certified millage can be levied until the resolution or ordinance to levy required in subsections (1) and (2) of 15-10-204 is approved by the governing board of the taxing authority and submitted to the assessor and the department.

History: **En. 84-7205 by Sec. 5, Ch. 286, L. 1974; R.C.M. 1947, 84-7205.**

15-10-206. Exceptions for decisions of tax appeal boards. The department shall notify each taxing authority of any change in the assessment roll which results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above that certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority which is required solely by a reduction of the assessment roll by the state or county tax appeal board may be adopted without further notice.

History: **En. 84-7206 by Sec. 6, Ch. 286, L. 1974; R.C.M. 1947, 84-7206.**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

15-10-207. Additional millage increase — new notice required. If after the initial notice provided for in 15-10-203 the taxing authority determines that it requires a greater millage or fails to act in the specified period, it must give notice anew under 15-10-203 and proceed as required in 15-10-204.

History: **En. 84-7207 by Sec. 7, Ch. 286, L. 1974; R.C.M. 1947, 84-7207; amd. Sec. 8, Ch. 581, L. 1979.**

15-10-208. Increase over legal maximum not authorized — reductions permitted. Nothing contained in this part may serve to extend or authorize any millage in excess of the maximum millage permitted by law or prevent the reduction of millage.

History: **En. 84-7208 by Sec. 8, Ch. 286, L. 1974; R.C.M. 1947, 84-7208; amd. Sec. 9, Ch. 581, L. 1979.**

Part 3

Entry of Taxes

15-10-301. Department to enter valuations. Before delivering the assessment book to the county clerk and recorder as required by 15-8-705, the department of revenue or its agent must proceed to add up the valuations and enter the total valuation of each kind of property and the total valuation of all property on the assessment book. The column of acres must show the total acreage of the county.

History: **En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R.C.M. 1921; Cal. Pol. C. Sec. 3727; re-en. Sec. 2156, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973; R.C.M. 1947, 84-4001.**

15-10-302. County clerk — duplicate statement. The county clerk and recorder shall, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the department of revenue or its agent, duplicate statements showing in separate columns:

(1) the total value of all property;
(2) the value of real estate, including mining claims, stated separately;
(3) the value of the improvements thereon;
(4) the value of taxable personal property;
(5) the number of acres of land and the number of mining claims, stated separately.

History: **En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R.C.M. 1921; Cal. Pol. C. Sec. 3728; re-en. Sec. 2157, R.C.M. 1935; amd. Sec. 77, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1977; R.C.M. 1947, 84-4002.**

Cross-References
County Assessor as agent of the Department, 15-8-102.

15-10-303. Statement to be transmitted to state auditor and department of revenue. The county clerk and recorder must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the department of revenue.

History: **En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R.C.M. 1921; Cal. Pol. C. Sec. 3729; re-en. Sec. 2158, R.C.M. 1935; amd. Sec. 149, Ch. 516, L. 1973; R.C.M. 1947, 84-4003.**

15-10-304. County clerk and recorder to follow directions of department, county or state tax appeal boards. As soon as the county clerk and recorder receives from the department of revenue, county or state tax appeal board a statement of any change or changes made by the department or board in the assessment books of the county or in any assessment therein contained, he must make the corresponding change or changes in the assessment books by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum when more than 50 cents as $1 and omitting it when less than 50 cents so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the county tax appeal board which is prohibited by 15-8-305; provided, however, that if such assessment books are not in the possession of the county clerk and recorder at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county or state officer then having possession of such assessment books, and it shall be the duty of such county or state officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: **En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R.C.M. 1921; Cal. Pol. C. Sec. 3730; re-en. Sec. 2159, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973; R.C.M. 1947, 84-4004.**

Cross-References
State Tax Appeal Board, Title 15, ch. 2.
County Tax Appeal Board, Title 15, ch. 15, part 1.

15-10-305. Department to compute and enter taxes — affidavit. The department of revenue or its agent must then compute and enter in a separate money column in the assessment book the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated and foot up the columns showing the total amount of such taxes and the columns of total value of property in the county and shall attach thereto his affidavit, by him subscribed as follows and shall on or before the second Monday of October deliver the completed assessment book to the county clerk and recorder:

"I, ..., an agent of the department of revenue, do swear that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes, and acreage as required by law, and the assessment book to which this affidavit is affixed is full, true, and correct and made in the manner prescribed by law.".

History: **En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R.C.M. 1921; Cal. Pol. C. Sec. 3731; re-en. Sec. 2160, R.C.M. 1935; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973; R.C.M. 1947, 84-4005.**

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-10-306. County clerk and recorder to attach affidavit to book. (1) Within 5 days after the second Monday in August, the county clerk must attach to the book the following affidavit and deliver the book to the department of revenue or its agent:

"I, ..., county clerk and recorder of the county of ...., do swear that I received the assessment book of the taxable property of the county from the department of revenue or its agent, with its affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state tax appeal boards.".

(2) The county clerk and recorder must verify, by his affidavit attached thereto, all statements made by him under the provisions of this code.

History: **(1)En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R.C.M. 1921; Cal. Pol. C. Sec. 3732; amd. Sec. 9, Ch. 96, L. 1923; re-en. Sec. 2161, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973; Sec. 84-4006, R.C.M. 1947; (2)En. Sec. 93, p. 107, L. 1891; re-en. Sec. 3848, Pol. C. 1895; re-en. Sec. 2612, Rev. C. 1907; re-en. Sec. 2164, R.C.M. 1921; Cal. Pol. C. Sec. 3735; re-en. Sec. 2164, R.C.M. 1935; Sec. 84-4008, R.C.M. 1947; R.C.M. 1947, 84-4006, 84-4008.**

Cross-References

Affidavit required upon delivery of municipal assessment book, 7-6-4412.

County Assessor as agent of Department, 15-8-102.

County Clerk to include statement showing for each school district and each city or town the assessed value and total taxable value after amendments and corrections, 20-9-122.

15-10-307. Clerk and recorder to deliver book to treasurer. On or before the third Monday of October, the county clerk and recorder must charge the treasurer with the full amount of taxes levied and deliver the original assessment book to the county treasurer.

History: **En. Sec. 92, p. 107, L. 1891; re-en. Sec. 3847, Pol. C. 1895; re-en. Sec. 2611, Rev. C. 1907; re-en. Sec. 2163, R.C.M. 1921; Cal. Pol. C. Sec. 3734; amd. Sec. 10, Ch. 96, L. 1923; re-en. Sec. 2163, R.C.M. 1935; amd. Sec. 4, Ch. 167, L. 1943; R.C.M. 1947, 84-4007.**

Cross-References

Preparation and delivery of book to City Treasurer, 7-6-4412.

Irrigation district assessments added to book prior to delivery, 85-7-2136.

Drainage district assessments added to book prior to delivery, 85-8-601.

15-10-308. Transfer of assessment book to new treasurer. If the original assessment book or the delinquent tax list is transferred from one collector to another, the county clerk and recorder must credit the one and charge the other with the amount then outstanding on the tax book.

History: En. Sec. 94, p. 107, L. 1891; re-en. Sec. 3849, Pol. C. 1895; re-en. Sec. 2613, Rev. C. 1907; re-en. Sec. 2165, R.C.M. 1921; Cal. Pol. C. Sec. 3736; amd. Sec. 11, Ch. 96, L. 1923; re-en. Sec. 2165, R.C.M. 1935; R.C.M. 1947, 84-4009.

15-10-309 through 15-10-320 reserved.

15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions. The department of revenue may not be required to levy or compute a tax for any new taxing jurisdiction created or for any change in an existing jurisdiction unless formally notified of its creation or change by January 1 of the year in which the taxes are to be levied.

History: En. 84-3811 by Sec. 1, Ch. 349, L. 1977; R.C.M. 1947, 84-3811; amd. Sec. 1, Ch. 76, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or for any change in an existing jurisdiction".

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

PROPERTY TAX APPEALS

Part 1 — County Tax Appeal Board

Section

15-15-101. County tax appeal board — meetings and compensation.
15-15-102. Application for reduction in valuation.
15-15-103. Examination of applicant — failure to hear application.
15-15-104. Appeal to state tax appeal board.
15-15-105. Repealed.
15-15-106. Repealed.

Chapter Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

State Tax Appeal Board, Title 15, ch. 2.

Appeal by person aggrieved by state debt collection procedure, 17-4-111.

Part 1

County Tax Appeal Board

15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $45 a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure shall apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-2-307 through 15-2-310.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R.C.M. 1921; Cal. Pol. C. Sec. 3672; re-en. Sec. 2113, R.C.M. 1935; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974; amd. Sec. 1, Ch. 285, L. 1975; amd. Sec. 1, Ch. 355, L. 1977; amd. Sec. 25, Ch. 453, L. 1977; R.C.M. 1947, 84-601; amd. Sec. 1, Ch. 630, L. 1979; amd. Sec. 2, Ch. 502, L. 1981; amd. Sec. 5, Ch. 526, L. 1981; amd. Sec. 1, Ch. 216, L. 1983; amd. Sec. 13, Ch. 526, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 216, in (1), increased compensation of board members from $25 to $45 a day.

Chapter 526, in (2)(a) and (2)(b), after "property owners" inserted "and purchasers under contracts for deed".

1981 Amendments: Chapter 502 inserted "except as provided in 15-2-201" after "disposed of, but" near the end of (2).

Chapter 526 added subsection (4).

Cross-References

Appeal on increase of value over owner's statement, 15-1-404.

No reduction allowed upon failure to make statement, 15-8-305.

No reduction allowed on assessment of concealed property, 15-8-306.

15-15-102. Application for reduction in valuation. No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later, a written application therefor. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R.C.M. 1921; Cal. Pol. C. Sec. 3674; amd. Sec. 2, Ch. 187, L. 1933; re-en. Sec. 2115, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973; amd. Sec. 1, Ch. 360, L. 1975; amd. Sec. 3, Ch. 155, L. 1977; amd. Sec. 3, Ch. 355, L. 1977; R.C.M. 1947, 84-603; amd. Sec. 2, Ch. 630, L. 1979.

Cross-References

Department to defend property tax appeals, 15-8-115.

15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in 15-15-102, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by registered or certified mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, except that listed in 15-2-302, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R.C.M. 1921; Cal. Pol. C. Sec. 3675; amd. Sec. 3, Ch. 187, L. 1933; re-en. Sec. 2116, R.C.M. 1935; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974; amd. Sec. 4, Ch. 355, L. 1977; R.C.M. 1947, 84-604; amd. Sec. 3, Ch. 630, L. 1979; (2)En. Sec. 4, Ch. 630, L. 1979.

15-15-104. Appeal to state tax appeal board. Any person or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

History: Ap. p. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; Sec. 84-709, R.C.M. 1947; Ap. p. by Code Commissioner, 1979; R.C.M. 1947, 84-709(part).

15-15-105. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. 84-709.2 by Sec. 2, Ch. 404, L. 1975; R.C.M. 1947, 84-709.2(part).

15-15-106. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. 84-709.3 by Sec. 3, Ch. 404, L. 1975; R.C.M. 1947, 84-709.3(part).

CHAPTER 16

COLLECTION OF PROPERTY TAXES

Part 1 — Notice and Payment

Section

15-16-101. Treasurer to publish notice — manner of publication.
15-16-102. Time for payment — penalty for delinquency.
15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements.
15-16-104. Entry of payment — receipt.
15-16-105. When property assessed more than once.
15-16-106 through 15-16-110 reserved.
15-16-111. Personal property — duty of department.
15-16-112. Department report of personal property in assessment book.
15-16-113. Personal property — duty of treasurer.
15-16-114. Rate of taxation — personal property.
15-16-115. Treasurer's record of personal property taxes paid.
15-16-116. Collection of poll tax.
15-16-117. Personal property — treasurer's duty to collect certain taxes on.

Part 2 — Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities.

Part 3 — Reporting Delinquent Taxes

15-16-301. Delinquent list — real property.
15-16-302. Tabulation and transmittal of real property delinquent list.
15-16-303. Treasurer charged with delinquent taxes.
15-16-304. Statement to be transmitted to department by county clerk and recorder.
15-16-305. Disposition of delinquent list.

Part 4 — Liens and Limitations

15-16-401. Tax due as a judgment or lien.
15-16-402. Tax on personalty lien on realty — separate assessment.
15-16-403. Lien on real property and improvements.
15-16-404. County lien on moneys of taxpayer.

Part 5 — Collection by Suit

15-16-501. Collection of property taxes by suit.
15-16-502. Complaint in action for taxes.
15-16-503. Collection by suit of personal property taxes when taypayer moves to another county.
15-16-504. Evidence at trial.
15-16-505. Costs.

Part 6 — Refunds

15-16-601. Taxes or penalties illegally collected to be refunded.
15-16-602. Concurrent remedies.

15-16-603 through 15-16-610 reserved.
15-16-611. Reduction of property tax for property destroyed by natural disaster.
15-16-612. Refund of tax paid.

Part 7 — Cancellations

15-16-701. Personal property taxes ten years delinquent — list.
15-16-702. Cancellation of taxes and obligations — filing of lists.
15-16-703. Adjustment of accounts after cancellation.
15-16-704. Certain unpaid taxes uncollectable — stricken from records.

Chapter Cross-References

Suspension of property taxes for persons in military services — collection procedures abated, 10-1-606.

State or county authorized to acquire property by taxation, 70-1-204.

Payment of taxes required to prove adverse possession, 70-19-411.

Taxes, assessments, and liens as encumbrance on real property, 70-20-305.

Part 1

Notice and Payment

15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes and assessments due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published for 2 weeks in some weekly or daily newspaper published in the county, if there is one, or if there

is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R.C.M. 1921; Cal. Pol. C. Sec. 3746; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931; re-en. Sec. 2169, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1977; Sec. 84-4101, R.C.M. 1947; Ap. p. Sec. 3861, Pol. C. 1895; re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. 2170, R.C.M. 1921; Cal. Pol. C. Sec. 3749; re-en. Sec. 2170, R.C.M. 1935; Sec. 84-4105, R.C.M. 1947; R.C.M. 1947, 84-4101, 84-4105; amd. Sec. 1, Ch. 492, L. 1981; amd. Sec. 1, Ch. 576, L. 1981; amd. Sec. 1, Ch. 6, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendments: Chapter 492 inserted "and assessments" after "taxes" in the first sentence of (2); inserted subsection (2)(d); and inserted subsection (3).

Chapter 576 increased the interest on delinquent taxes from ⅔ of 1% per month to 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Cross-References

Treasurer as collector of taxes, 7-6-2503.

Delivery of book to Treasurer, 15-10-307.

Definition of "school district", 20-15-403.

Hail insurance assessment included with statement, 80-2-224.

Copy of water rights filing notice included with statement, 85-2-213.

15-16-102. Time for payment — penalty for delinquency. All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; Sec. 1(a) amd. Sec. 1, Ch. 1, Ex. L. 1933; re-en. Sec. 2169.2, R.C.M. 1935; R.C.M. 1947, 84-4103; amd. Sec. 2, Ch. 165, L. 1979; amd. Sec. 4, Ch. 527, L. 1981; amd. Sec. 2, Ch. 576, L. 1981; amd. Sec. 2, Ch. 6, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendments: Chapter 527 substituted "assessments made for special improvements in cities and towns payable under 15-16-103" for "on municipal special improvement district bonds sold on or before July 1, 1979" after "Montana, except" in the first sentence of the section.

Chapter 576 increased the interest on delinquent taxes from ⅔ of 1% per month to 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Cross-References

County Treasurer to collect city and town taxes, 7-6-4413.

Definition of "improvements", 15-1-101.

Reduction of tax for destroyed property, 15-16-611.

Applicable to payment of tax on net proceeds and royalties of mines, 15-23-507.

Applicable to payment of tax on metal mines, 15-23-804.

Delinquent taxpayer ineligible for hail insurance program, 80-2-207.

Collection of expenses of eradicating orchard diseases, 80-7-206.

Collection of expenses of eradicating barberry plants, 80-7-303.

Collection of irrigation district assessments, 85-7-2136.

Collection of drainage district assessments, 85-8-601.

Collection of conservancy district assessments, 85-9-604.

15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements. (1) Special assessments or installments of special assessments made for special improvements in towns and cities, the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been duly and regularly made and levied by resolution according to law, shall be payable as follows:

(a) One-half of such taxes shall be payable on or before 5 p.m. on November 30 of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102.

(b) One-half of such taxes shall be payable on or before 5 p.m. on May 31 of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102.

(2) The collection of special assessments or installments of special assessments made for special improvements in towns and cities shall be had and made as provided by 7-12-4181 as the same is now in force or may be hereafter amended.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; re-en. Sec. 2169.3, R.C.M. 1935; R.C.M. 1947, 84-4104; amd. Sec. 5, Ch. 527, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been" after "towns and cities" in the middle of (1); inserted "as follows:" at the end of (1); inserted "one-half of such taxes shall be payable" at the beginning of (1)(a); deleted "are or may hereafter be provided by the laws of the state of Montana for other" after "nonpayment as" near the end of (1)(a); added "under 15-16-102" to the end of (1)(a); inserted subsection (1)(b); substituted "of special assessments or installments of special assessments made for special improvements in towns or cities" for "thereof" at the beginning of (2); and made minor changes in phraseology.

Cross-References

Penalty and interest on delinquent taxes, 15-16-102.

15-16-104. Entry of payment — receipt. (1) The county treasurer must note the date and the amount of the payment of any tax in the assessment book opposite the name of the person paying.

(2) He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

History: (1)En. Sec. 3862, Pol. C. 1895; re-en. Sec. 2618, Rev. C. 1907; re-en. Sec. 2171, R.C.M. 1921; Cal. Pol. C. Sec. 3750; amd. Sec. 3, Ch. 96, L. 1923; re-en. Sec. 2171, R.C.M. 1935; Sec. 84-4106, R.C.M. 1947; (2)En. Sec. 97, p. 108, L. 1891; re-en. Sec. 3863, Pol. C. 1895; re-en. Sec. 2619, Rev. C. 1907; re-en. Sec. 2172, R.C.M. 1921; Cal. Pol. C. Sec. 3751; re-en. Sec. 2172, R.C.M. 1935; Sec. 84-4107, R.C.M. 1947; R.C.M. 1947, 84-4106, 84-4107.

15-16-105. When property assessed more than once. When the treasurer discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts under affidavit to the county clerk and recorder.

History: En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907; re-en. Sec. 2223, R.C.M. 1921; Cal. Pol. C. Sec. 3805; re-en. Sec. 2223, R.C.M. 1935; R.C.M. 1947, 84-4178.

15-16-106 through 15-16-110 reserved.

15-16-111. Personal property — duty of department. (1) It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately and in any event not more than 5 days thereafter make a report to the treasurer, setting forth the nature, kind, description, and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same.

(2) Where such personal property is located in any city or town which shall have provided by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the department also and at the same time shall furnish to said city treasurer or town clerk a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the department or its agent must use the levy made during the previous year.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R.C.M. 1921; Cal. Pol. C. Sec. 3820; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 143, L. 1929; re-en. Sec. 2238, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973; R.C.M. 1947, 84-4201.

Cross-References

Definition of "personal property", 15-1-101.

County Assessor as agent of the Department, 15-8-102.

Applies to migratory personal property, 15-24-302.

Sale of property on execution, Title 25, ch. 13, part 7.

Lessee of state land subject to personal property taxes, 77-6-114.

15-16-112. Department report of personal property in assessment book. The department of revenue or its agent must note on the assessment book, opposite the names of each person owning, claiming, or possessing such personal property which may be so reported to the treasurer, the fact that such report was made to the treasurer and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R.C.M. 1921; re-en. Sec. 2251, R.C.M. 1935; amd. Sec. 84, Ch. 405, L. 1973; R.C.M. 1947, 84-4211.

Cross-References

Definition of "personal property", 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-113. Personal property — duty of treasurer. (1) The county treasurer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the division of motor vehicles, department of justice, that the amount of such tax is due and payable at the county treasurer's office. The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff. The county treasurer may, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. The sheriff may receive the same fees as he is entitled to in making a seizure and sale under execution.

(2) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(1), (2).

Cross-References

Definition of "personal property", 15-1-101.

Sale of personal property, Title 15, ch. 17, part 9.

Sale to collect coal gross proceeds and severance taxes, 15-23-704.

Applies to migratory personal property, 15-24-302.

Collection of livestock taxes, 15-24-910.

Statute of Limitations on recovery of property seized by tax collector, 27-2-210.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen the value of an insurer under Insurer's Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Lessee of state land subject to personal property tax, 77-6-114.

Levy for collection of delinquent taxes owned by municipality or county and taxable as part of an industrial development project, 90-5-110.

15-16-114. Rate of taxation — personal property. (1) All rates of tax levy set by the board of county commissioners on the second Monday in August of each year shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge.

(2) If the rate of taxation fixed for the year in which the collection is made is an increase over the preceding year's levy, then the said board of county commissioners may direct the county treasurer to collect the amount of such increased levy but shall not be obliged to do so in cases where, in the opinion of the board, the cost of collection would exceed the amount of such increase. If the rate fixed for the year in which the collection is made shall be less than the levy for the preceding year, then the person from whom such excess tax was collected may file with the board of county commissioners a duly verified claim for a refund of such excess tax at any time before November 1 of the year in which such an excess was collected, and such

claim shall be allowed and ordered paid by the board of county commissioners to the amount of such excess.

History: **En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part).**

Cross-References

Definition of "personal property", 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-115. Treasurer's record of personal property taxes paid. The treasurer must, on or before December 1 of each year, note on the assessment book, opposite the name of each person from whom taxes have been collected by him in pursuance of such report of the assessor, the amount of taxes received and the date of the receipt thereof or, in case such taxes have not been collected by him, the reason why such collection was not made.

History: **En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2250, R.C.M. 1921; re-en. Sec. 2250, R.C.M. 1935; R.C.M. 1947, 84-4210.**

Cross-References

Definition of "personal property", 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-116. Collection of poll tax. Whenever any special poll tax shall be imposed as provided by the laws of this state, whether for road, poor, or any other purpose, it shall be the duty of the county clerk and recorder to have suitable receipts for the same printed and to deliver said receipts to the county treasurer charging him with the same and it shall be the duty of the county treasurer to proceed to collect such poll tax as provided by law. The receipts herein provided for shall be bound in book form and shall be printed and written in triplicate. One copy of such receipt shall be delivered to the person paying the tax, one copy of each and all receipts shall be turned over to the county clerk and recorder at the end of each month to be preserved in his office, and one copy of each and all such receipts shall be permanently preserved in the office of the treasurer.

History: **En. Sec. 1, Ch. 81, L. 1923; re-en. Sec. 2165.1, R.C.M. 1935; R.C.M. 1947, 84-4010.**

Cross-References

Certain firefighters exempt, 7-33-2313.

15-16-117. Personal property — treasurer's duty to collect certain taxes on. (1) The county treasurer must demand payment of poor taxes, authorized by 53-2-321, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable therefor whose name does not appear on the assessment lists, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any property owned by such person.

(2) These taxes shall be added upon the assessment lists to other taxes of persons liable therefor paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes, and all personal property assessed against a person shall be liable for the payment of such taxes.

(3) The procedure for the sale of such property by the county treasurer for such taxes shall be regulated by 15-16-113 and chapter 17, part 9.

History: (1), (2)En. Sec. 1, Ch. 168, L. 1935; re-en. Sec. 2252.1, R.C.M. 1935; Sec. 84-4213, R.C.M. 1947; (3)En. Sec. 2, Ch. 168, L. 1935; re-en. Sec. 2252.2, R.C.M. 1935; Sec. 84-4214, R.C.M. 1947; R.C.M. 1947, 84-4213, 84-4214.

Part 2

Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302(4) which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services.

History: En. 84-41-105 by Sec. 1, Ch. 449, L. 1975; R.C.M. 1947, 84-41-105; amd. Sec. 12, Ch. 617, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "other than a large-scale mineral development as defined in 90-6-302(4)".

Cross-References

Property classified as new industrial property under 15-6-135 and 15-6-152 ineligible, 15-6-152.

Coal Board grants for payment of credit, 90-6-205.

Part 3

Reporting Delinquent Taxes

15-16-301. Delinquent list — real property. On the third Monday of December and on the third Monday of June of each year, the county treasurer must make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete delinquent list of all persons and property then owing taxes, and the county clerk and recorder shall compare such report with the books of the county treasurer and shall keep a record of such report in his office.

History: En. Sec. 101, p. 109, L. 1891; re-en. Sec. 3867, Pol. C. 1895; re-en. Sec. 2623, Rev. C. 1907; re-en. Sec. 2176, R.C.M. 1921; Cal. Pol. C. Sec. 3758; amd. Sec. 5, Ch. 96, L. 1923; re-en. Sec. 2176, R.C.M. 1935; R.C.M. 1947, 84-4111.

15-16-302. Tabulation and transmittal of real property delinquent list. (1) The county treasurer must, at the time specified in 15-16-301, deliver to the county clerk and recorder a complete delinquent list of all persons and property then owing taxes.

(2) In the list so delivered, all matters and things contained in the assessment book and relating to delinquent persons or property must be set down in numerical or alphabetical order.

(3) The county clerk and recorder must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the county treasurer who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book and must require from him an immediate account for any existing deficiency.

History: (1)En. Sec. 102, p. 109, L. 1891; re-en. Sec. 3868, Pol. C. 1895; re-en. Sec. 2624, Rev. C. 1907; re-en. Sec. 2177, R.C.M. 1921; re-en. Sec. 2177, R.C.M. 1935; Sec. 84-4112, R.C.M. 1947; (2)En. Sec. 103, p. 109, L. 1891; re-en. Sec. 3869, Pol. C. 1895; re-en. Sec. 2625, Rev. C. 1907; re-en. Sec. 2178, R.C.M. 1921; Cal. Pol. C. Sec. 3760; re-en. Sec. 2178, R.C.M. 1935; Sec. 84-4113, R.C.M. 1947; (3)En. Sec. 104, p. 109, L. 1891; re-en. Sec. 3870, Pol. C. 1895; re-en. Sec. 2626, Rev. C. 1907; re-en. Sec. 2179, R.C.M. 1921; Cal. Pol. C. Sec. 3761; re-en. Sec. 2179, R.C.M. 1935; Sec. 84-4114, R.C.M. 1947; R.C.M. 1947, 84-4112, 84-4113, 84-4114.

15-16-303. Treasurer charged with delinquent taxes. After settlement with the county treasurer as prescribed herein, the county clerk and recorder must charge the treasurer then acting with the amount of taxes then due on the delinquent tax list and within 3 days thereafter deliver the list, duly certified, to the county treasurer.

History: En. Sec. 105, p. 109, L. 1891; re-en. Sec. 3871, Pol. C. 1895; re-en. Sec. 2627, Rev. C. 1907; re-en. Sec. 2180, R.C.M. 1921; Cal. Pol. C. Sec. 3762; amd. Sec. 6, Ch. 96, L. 1923; re-en. Sec. 2180, R.C.M. 1935; R.C.M. 1947, 84-4115.

15-16-304. Statement to be transmitted to department by county clerk and recorder. Within 10 days after each settlement, the county clerk and recorder must transmit by mail to the department of revenue a statement in such form as it may require of each kind of property assessed and delinquent and the total amount of delinquent taxes.

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2628, Rev. C. 1907; re-en. Sec. 2181, R.C.M. 1921; Cal. Pol. C. Sec. 3763; amd. Sec. 7, Ch. 96, L. 1923; re-en. Sec. 2181, R.C.M. 1935; amd. Sec. 150, Ch. 516, L. 1973; R.C.M. 1947, 84-4116.

15-16-305. Disposition of delinquent list. (1) The county treasurer must annually on the third Monday of February attend at the office of the county clerk and recorder with the delinquent list. The county clerk and recorder must then carefully compare the lists with the assessments of persons and property not marked "paid" on the assessment book, and when taxes have been paid, he must note the fact in the appropriate column in the assessment book.

(2) The county clerk and recorder must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with such payment.

(3) The county clerk and recorder must then foot up the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with him. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1) of this section, the treasurer must make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them.

History: (1)En. Sec. 141, p. 116, L. 1891; re-en. Sec. 3908, Pol. C. 1895; re-en. Sec. 2664, Rev. C. 1907; re-en. Sec. 2217, R.C.M. 1921; re-en. Sec. 2217, R.C.M. 1935; Sec. 84-4172, R.C.M. 1947; (2)En. Sec. 142, p. 117, L. 1891; re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. 2665, Rev. C. 1907; re-en. Sec. 2218, R.C.M. 1921; Cal. Pol. C. Sec. 3798; re-en. Sec. 2218, R.C.M. 1935; Sec. 84-4173, R.C.M. 1947; (3)En. Sec. 143, p. 117, L. 1891; re-en. Sec. 3910, Pol. C. 1895; re-en. Sec. 2666, Rev. C. 1907; re-en. Sec. 2219, R.C.M. 1921; Cal. Pol. C. Sec. 3799; re-en. Sec. 2219, R.C.M. 1935; Sec. 84-4174, R.C.M. 1947; (4)En. Sec. 144, p. 117, L. 1891; re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. 2667, Rev. C. 1907; re-en. Sec. 2220, R.C.M. 1921; Cal. Pol. C. Sec. 3800; re-en. Sec. 2220, R.C.M. 1935; Sec. 84-4175, R.C.M. 1947; R.C.M. 1947, 84-4172, 84-4173, 84-4174, 84-4175.

Part 4

Liens and Limitations

Part Cross-References

Lien for delinquent mines net proceeds tax, 15-23-504, 15-23-508.

Lien for delinquent oil and gas net proceeds tax, 15-23-608.

Lien for delinquent coal gross proceeds and severance taxes, 15-23-704.

Lien for delinquent metal mines gross proceeds tax, 15-23-806.

Paid tax liens more than 7 years old not allowed in consumer credit report, 31-3-112.

Inclusion of tax liens in consumer report for employment purposes, 31-3-126.

Priority of tax lien to lien for condominium common expenses, 70-23-607.

Priority of lien for fire protection assessment, 76-13-211.

Lien of hail insurance tax levy, 80-2-225.

Priority of lien for reclamation of coal-mine land, 82-4-239.

15-16-401. Tax due as a judgment or lien. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the same to the sheriff. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R.C.M. 1921; Cal. Pol. C. Sec. 3716; re-en. Sec. 2152, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1963; R.C.M. 1947, 84-3807.

Cross-References

Execution of judgment, Title 25, ch. 13.

Ninety days on return of Writ of Execution, 25-13-404.

15-16-402. Tax on personalty lien on realty — separate assessment. (1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof from and after 12 midnight of January 1 in each year.

(2) The taxes upon personal property based upon a taxable value up to and including $1,000 shall be a first and prior lien upon the real property of the owner of such personal property. Taxes upon personal property based upon the taxable value thereof in excess of $1,000 shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and recorder of the county where such real property is situated, at or before the time such personal property tax attached thereto, shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of $1,000 of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including $1,000. Personal property taxes upon a taxable value up to $1,000 may be paid, redeemed from a tax sale as by law provided, or discharged separately from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to $1,000, as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount thereof; and

(f) a statement that he claims the benefit of the provisions of this section.

(4) Such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice.

(5) Any owner of a mortgage on real estate upon which personal property taxes are by this section made a lien, where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for 1 or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered or certified mail at least

10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department or its agent of such request, it is hereby made the duty of the department or its agent to make a separate assessment of real and personal property of the owner thereof, and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof, and the personal property taxes shall be collected in the manner provided by law for other personal property.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R.C.M. 1921; Cal. Pol. C. Sec. 3717; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; re-en. Sec. 2153, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973; amd. Sec. 12, Ch. 388, L. 1975; R.C.M. 1947, 84-3808.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-16-403. Lien on real property and improvements. Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year.

History: En. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907; re-en. Sec. 2154, R.C.M. 1921; Cal. Pol. C. Sec. 3718; re-en. Sec. 2154, R.C.M. 1935; amd. Sec. 13, Ch. 388, L. 1975; R.C.M. 1947, 84-3809.

15-16-404. County lien on moneys of taxpayer. The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes not a lien on real estate of the taxpayer. Due notice shall be given the lien holder, if any.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(4).

Cross-References

Applies to migratory personal property, 15-24-302.

Part 5

Collection by Suit

Part Cross-References

Collection of taxes on interests in United States lands, 15-24-1104.

15-16-501. Collection of property taxes by suit. The state auditor may, at any time after a delinquent list has been delivered to a county treasurer, direct such treasurer not to proceed in the collection of any tax on said list amounting to $300, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the county treasurer, after offering the property for sale once and there being no purchaser in good faith, must make out and deliver to the state auditor a certified copy of the entries upon the delinquent list relative to such tax. The treasurer, or state auditor in case the treasurer refuses or neglects for 15 days after being directed to bring suit for collection by the state auditor, may proceed by civil action in the proper court and in the name of the state of Montana to collect such tax and costs.

History: En. Sec. 4020, Pol. C. 1895; re-en. Sec. 2738, Rev. C. 1907; re-en. Sec. 2253, R.C.M. 1921; re-en. Sec. 2253, R.C.M. 1935; R.C.M. 1947, 84-4301.

Cross-References

Jurisdiction of District Courts, 3-5-302.

Jurisdiction of Justices' Courts, 3-10-301.

Jurisdiction of City Courts, 3-11-103.

Suit to collect coal gross proceeds and severance taxes, 15-23-704.

Justices' Courts without jurisdiction to hear tax issues, 25-31-101.

15-16-502. Complaint in action for taxes. (1) In such action a complaint in the following form is sufficient:

(Title of Court)

The State of Montana
vs.
.... (Naming the defendant)

Plaintiff avers that the defendant is indebted to plaintiff in the sum of .... dollars, state and county taxes for the fiscal year 19.., with 10% added for the nonpayment of such taxes, and .... dollars, costs of collection to date. Plaintiff demands judgment for said several sums and prays that a writ of attachment may issue in form as prescribed by law.

(Signed by the county treasurer or state auditor or his attorney)

(2) On the filing of such complaint, the clerk must issue a summons and the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil action. If in such action the plaintiff recovers judgment, there shall be included in such judgment an attorney's fee of 10% on the amount of the tax. In such action the certified copy mentioned in 15-16-501 made by the treasurer and delivered to the state auditor is prima facie evidence that the person against whose property the tax was levied is indebted to the state of Montana in the amount of such tax. In case of payment of any such taxes after suit as above mentioned shall have been commenced or after the recovery of judgment therefor, such payment must be made to the county treasurer of the county in which such taxes are due, whereupon the treasurer, after distributing to the several funds of the county the portions belonging to it and paying to the state auditor or his attorney the portion received as attorney's fees and other costs, must pay the remainder to the state treasurer at the times and in the manner prescribed by law for the payment of other state taxes.

History: En. Sec. 4021, Pol. C. 1895; re-en. Sec. 2739, Rev. C. 1907; re-en. Sec. 2254, R.C.M. 1921; re-en. Sec. 2254, R.C.M. 1935; R.C.M. 1947, 84-4302.

Cross-References

Suit to collect coal gross proceeds and severance taxes, 15-23-704.

Prejudgment attachment, Title 27, ch. 18.

15-16-503. Collection by suit of personal property taxes when taypayer moves to another county. If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

History: En. Sec. 149, p. 118, L. 1891; re-en. Sec. 3917, Pol. C. 1895; re-en. Sec. 2673, Rev. C. 1907; re-en. Sec. 2226, R.C.M. 1921; Cal. Pol. C. Sec. 3808; re-en. Sec. 2226, R.C.M. 1935; R.C.M. 1947, 84-4181.

15-16-504. Evidence at trial. On the trial a certified copy of the assessment signed by the county clerk and recorder of the county where the same was made, with the affidavit of the treasurer thereto attached that the tax has not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that such tax and the per centum are due and entitles him to judgment unless the defendant proves that the tax was paid.

History: En. Sec. 150, p. 118, L. 1891; re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 2674, Rev. C. 1907; re-en. Sec. 2227, R.C.M. 1921; Cal. Pol. C. Sec. 3809; re-en. Sec. 2227, R.C.M. 1935; R.C.M. 1947, 84-4182.

15-16-505. Costs. The treasurer and county clerk and recorder must allow the expenses of collecting such tax and permit a deduction thereof from the amount collected if they do not exceed one-third of the amount of the tax collected.

History: En. Sec. 3919, Pol. C. 1895; re-en. Sec. 2675, Rev. C. 1907; re-en. Sec. 2228, R.C.M. 1921; re-en. Sec. 2228, R.C.M. 1935; R.C.M. 1947, 84-4183.

Cross-References

Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.

Part 6

Refunds

15-16-601. Taxes or penalties illegally collected to be refunded. (1) (a) Any taxes, per centum, and costs paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer as provided in 15-1-504 and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

(b) When any part of the taxes, penalties, or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(c) No order for the refund of any taxes, license fees, per centum, or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, license fee, penalty, or costs or his guardian or, in case of his death, by his executor or administrator, which claim must be filed within 10 years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(d) All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds.

(2) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of such portion of the taxes or license fees as the state tax appeal board has judged should be refunded.

History: **En. Sec. 145, p. 117, L. 1891; re-en. Sec. 3913, Pol. C. 1895; re-en. Sec. 2669, Rev. C. 1907; re-en. Sec. 2222, R.C.M. 1921; Cal. Pol. C. Sec. 3804; re-en. Sec. 2222, R.C.M. 1935; amd. Sec. 1, Ch. 201, L. 1939; amd. Sec. 1, Ch. 71, L. 1951; R.C.M. 1947, 84-4176; amd. Sec. 3, Ch. 541, L. 1979; amd. Sec. 3, Ch. 501, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "license fees" after "any taxes" near the beginning of (1)(c) and after "such tax" near the middle of (1)(c); added subsection (2).

Cross-References

Definition of "school district", 20-15-403.

15-16-602. Concurrent remedies.

Section 15-16-601 shall not be deemed or construed to be in conflict with the provisions of part 4 of chapter 1, but 15-16-601 and the provisions of such part 4 shall provide and afford concurrent remedies.

History: **En. Sec. 2, Ch. 201, L. 1939; R.C.M. 1947, 84-4177.**

15-16-603 through 15-16-610 reserved.

15-16-611. Reduction of property tax for property destroyed by natural disaster.

(1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property or a trailer or mobile home [as described in 15-6-134(1)(c)] have been destroyed to such an extent that such improvements have been rendered unsuitable for their previous use by natural disaster, adjust the tax due and payable for the current year on the property under 15-16-102 as provided in subsection (2) of this section.

(2) To determine the amount of tax due for destroyed property, the county treasurer shall multiply the amount of tax levied and assessed on the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365.

(3) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(4) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind.

History: **En. Sec. 1, Ch. 541, L. 1979; amd. Sec. 1, Ch. 263, L. 1981.**

Compiler's Comments

Bracketed Language: Chapter 632, L. 1983, deleted subsection (1)(c) of 15-6-134. The Code Commissioner has bracketed the language in this section because the internal reference is no longer correct.

1981 Amendment: Inserted "or a trailer or mobile home as described in 15-6-134(1)(c)" in (1).

15-16-612. Refund of tax paid. (1) If the property is destroyed after the property taxes have been paid for the current year, the taxpayer is entitled to a refund of the amount of tax paid in excess of the adjusted amount required by 15-16-611.

(2) A refund shall be made as provided for in 15-16-601.

History: **En. Sec. 2, Ch. 541, L. 1979.**

Part 7

Cancellations

Part Cross-References

Cancellation of taxes upon reversion to state, 77-2-314.

15-16-701. Personal property taxes ten years delinquent — list. (1) It shall be the duty of each county treasurer to prepare in triplicate and submit to the board of county commissioners of his county, on or before the first Monday of June in each year, a list of personal property taxes which are not a lien on real estate and which have been delinquent for 10 years or more. Said list shall show the following:

(a) name and address of the delinquent taxpayer;

(b) amount of the delinquent tax, plus penalty, if any;

(c) the year the tax became delinquent.

(2) Every county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of his county a list of all contractual obligations owed to or held by his county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations, 27-2-202(1). Said list shall show the following:

(a) name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", "promissory note", as the case may be;

(c) the date of obligation, date when last payment became due, date of last payment thereon, and the date when the collection of the obligation became barred by said statute of limitations.

History: **En. Sec. 1, Ch. 44, L. 1949; R.C.M. 1947, 84-4215.**

15-16-702. Cancellation of taxes and obligations — filing of lists. Upon receipt of such list or lists and within 30 days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon, the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in such list or lists, as corrected, required by this part to be canceled and spread such order upon its minutes. Such order and minutes need not set forth in full the contents of such list or lists, a proper reference therein for their identification being sufficient. At the time of making such order, the original or copy of such list or lists, as corrected, shall be filed with and as a part of the records of the board. One legible copy thereof shall be filed with the county clerk and recorder as a public record, and one legible copy thereof shall be filed with the county treasurer as a permanent record of his office.

History: **En. Sec. 2, Ch. 44, L. 1949; amd. Sec. 11, Ch. 126, L. 1977; R.C.M. 1947, 84-4216.**

15-16-703. Adjustment of accounts after cancellation. Upon notification of the above order for cancellation, the county clerk and recorder and county treasurer must adjust their taxes-receivable accounts to conform to the said order of cancellation.

History: **En. Sec. 3, Ch. 44, L. 1949; R.C.M. 1947, 84-4217.**

15-16-704. Certain unpaid taxes uncollectable — stricken from records. All unpaid taxes, which constitute a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectable and stricken from the respective tax records.

History: **En. 84-4175.1 by Sec. 1, Ch. 286, L. 1975; R.C.M. 1947, 84-4175.1.**

CHAPTER 17

TAX SALES

Part 1 — Notice of and Protest of Sale

Section
15-17-101. Publication of notice of tax sales.
15-17-102. Copy of notice and affidavit to county clerk and recorder.
15-17-103 through 15-17-110 reserved.
15-17-111. Land irregularly assessed not to be sold.
15-17-112. Protest against sale.
15-17-113. Duty of treasurer on delivery of protest.

Part 2 — Sale

15-17-201. Conduct of sale.
15-17-202. Sale of portion of parcel.
15-17-203. Bid of person once refusing to make payment to be rejected.
15-17-204. Certificate of sale by treasurer — signature — filing.
15-17-205. Treasurer to record description of land sold.
15-17-206. Lien of state — vesting and divesting.
15-17-207. County as purchaser.
15-17-208. Assignment of county's interest.

Part 3 — Procedure After Sale

15-17-301. Resale when purchaser does not make payment.
15-17-302. Disposition of money from sale or lease of tax deed lands.
15-17-303. Assignment of rights of county.
15-17-304. Assessment of county tax deed lands.
15-17-305. No sale unless directed by county commissioners.
15-17-306 through 15-17-310 reserved.
15-17-311. Sale not voided by misnomer of ownership.
15-17-312. Voided sale — refund to purchaser.

Parts 4 through 8 reserved

Part 9 — Sale of Personal Property

15-17-901. Sale of personal property for delinquent taxes.
15-17-902. Deposit of excess proceeds from sale.
15-17-903. Unsold portion to remain at risk of owner.

Chapter Cross-References

Sale to include municipal taxes, 7-6-4414, 7-6-4423.

Suspension of property taxes for persons in military services — collection procedures abated, 10-1-606.

Statute of Limitations on recovery of property seized by tax collector, 27-2-210.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Tax sale for collection of unpaid irrigation district assessment, 85-7-2151.

Tax sale for collection of unpaid drainage district assessment, 85-8-603.

Part 1

Notice of and Protest of Sale

15-17-101. Publication of notice of tax sales. (1) On or before the last Monday of June of each year, the county treasurer must publish in the manner and for the time prescribed in this section a notice specifying:

(a) that at a given time and place (to be designated in the notice), all property in the county upon which delinquent taxes are a lien will be sold at public auction unless prior to said time said delinquent taxes, together with all interest, penalties, and costs due thereon, are paid;

(b) a complete delinquent list of all persons and property in the county now owing taxes, including all city and town property as to which taxes or taxes and assessments are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

(2) The publication must be made once a week for 3 successive weeks in such newspaper published in the county as the board of county commissioners directs; if there is no newspaper published in the county, then by posting a copy of the list in three public places.

(3) The publication must designate the time and place of sale.

(4) The time of sale must not be less than 21 or more than 28 days from the first publication, and the place must be in front of the county treasurer's office.

History: (1)En. Sec. 107, p. 110, L. 1891; amd. Sec. 3873, Pol. C. 1895; amd. Sec. 1, p. 142, L. 1901; re-en. Sec. 2629, Rev. C. 1907; re-en. Sec. 2182, R.C.M. 1921; Cal. Pol. C. Sec. 3764; amd. Sec. 8, Ch. 96, L. 1923; re-en. Sec. 2182, R.C.M. 1935; amd. Sec. 1, Ch. 26, L. 1939; Sec. 84-4117, R.C.M. 1947; (2)En. Sec. 109, p. 110, L. 1891; re-en. Sec. 3875, Pol. C. 1895; re-en. Sec. 2631, Rev. C. 1907; re-en. Sec. 2184, R.C.M. 1921; Cal. Pol. C. Sec. 3766; re-en. Sec. 2184, R.C.M. 1935; Sec. 84-4118, R.C.M. 1947; (3)En. Sec. 110, p. 110, L. 1891; re-en. Sec. 3876, Pol. C. 1895; re-en. Sec. 2632, Rev. C. 1907; re-en. Sec. 2185, R.C.M. 1921; Cal. Pol. C. Sec. 3768; re-en. Sec. 2185, R.C.M. 1935; Sec. 84-4119, R.C.M. 1947; (4)En. Sec. 111, p. 110, L. 1891; re-en. Sec. 3877, Pol. C. 1895; re-en. Sec. 2633, Rev. C. 1907; re-en. Sec. 2186, R.C.M. 1921; Cal. Pol. C. Sec. 3768; re-en. Sec. 2186, R.C.M. 1935; Sec. 84-4120, R.C.M. 1947; R.C.M. 1947, 84-4117, 84-4118, 84-4119, 84-4120.

Cross-References

Delinquent city or town taxes to be included, 7-6-4414, 7-6-4423.

15-17-102. Copy of notice and affidavit to county clerk and recorder. The county treasurer, as soon as he has made the publication required by 15-17-101 must file with the county clerk and recorder a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places, designating the places therein, which affidavit is prima facie evidence of all the facts stated therein.

History: En. Sec. 112, p. 110, L. 1891; re-en. Sec. 3878, Pol. C. 1895; re-en. Sec. 2634, Rev. C. 1907; re-en. Sec. 2187, R.C.M. 1921; Cal. Pol. C. Sec. 3769; re-en. Sec. 2187, R.C.M. 1935; R.C.M. 1947, 84-4121.

15-17-103 through 15-17-110 reserved.

15-17-111. Land irregularly assessed not to be sold. If the treasurer discovers before the sale that on account of irregular assessment or of any other assessment any land ought not to be sold, he must not offer the land for sale, and the board of county commissioners must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

History: En. Sec. 147, p. 118, L. 1891; re-en. Sec. 3915, Pol. C. 1895; re-en. Sec. 2671, Rev. C. 1907; re-en. Sec. 2224, R.C.M. 1921; Cal. Pol. C. Sec. 3806; re-en. Sec. 2224, R.C.M. 1935; R.C.M. 1947, 84-4179.

15-17-112. Protest against sale. Whenever property is advertised for sale for the nonpayment of delinquent taxes and the assessment is valid in part and void for the excess, the sale must not for that cause be deemed invalid or any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee unless the owner of the property or his agent, not less than 6 days before the time at which the property is advertised to be sold, delivers to the treasurer a protest in writing signed by the owner or agent, specifying the portion of the tax which he claims to be invalid and the ground upon which such claim is based.

History: En. Sec. 151, p. 118, L. 1891; re-en. Sec. 3920, Pol. C. 1895; re-en. Sec. 2676, Rev. C. 1907; re-en. Sec. 2229, R.C.M. 1921; re-en. Sec. 2229, R.C.M. 1935; R.C.M. 1947, 84-4184.

15-17-113. Duty of treasurer on delivery of protest. In case any owner of property advertised to be sold for delinquent taxes at least 6 days before the time advertised for the sale to take place delivers to the county treasurer his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part and, if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded, it is the duty of the treasurer either to:

(1) sell the property assessed for the whole amount appearing upon the duplicate assessment book; or

(2) withdraw the property from sale and report the case to the board of county commissioners for its direction in the premises, and in such case the board may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the treasurer to proceed with the sale.

History: En. Sec. 152, p. 119, L. 1891; re-en. Sec. 3921, Pol. C. 1895; re-en. Sec. 2677, Rev. C. 1907; re-en. Sec. 2230, R.C.M. 1921; re-en. Sec. 2230, R.C.M. 1935; R.C.M. 1947, 84-4185.

Part 2

Sale

Part Cross-References

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Interest of purchaser at tax sale when land sold was being purchased from the state, 77-2-315.

15-17-201. Conduct of sale. (1) On the day fixed for sale or on some subsequent day to which he may have postponed it, of which he must give notice, the county treasurer, between the hours of 10 a.m. and 3 p.m., must commence the sale of the property advertised, commencing at the head of the list and continuing in alphabetical or numerical order of lots and blocks until completed.

(2) He may postpone the day of commencing the sale from day to day, but the sale must be completed within 3 weeks from the day first fixed.

History: (1)En. Sec. 1732, 5th Div. Comp. Stat. 1887; amd. Sec. 36, p. 96, Ex. L. 1887; amd. Sec. 113, p. 111, L. 1891; amd. Sec. 3880, Pol. C. 1895; re-en. Sec. 2636, Rev. C. 1907; re-en. Sec. 2189, R.C.M. 1921; re-en. Sec. 2189, R.C.M. 1935; Sec. 84-4122, R.C.M. 1947; (2)En. Sec. 114, p. 111, L. 1891; re-en. Sec. 3881, Pol. C. 1895; re-en. Sec. 2637, Rev. C. 1907; re-en. Sec. 2190, R.C.M. 1921; re-en. Sec. 2190, R.C.M. 1935; Sec. 84-4123, R.C.M. 1947; R.C.M. 1947, 84-4122, 84-4123.

Cross-References

Purchase of land by irrigation district, 85-7-2157.

15-17-202. Sale of portion of parcel. The owner or person in possession of any real estate offered for sale for taxes due thereon may designate in writing to the county treasurer prior to the sale what portion of the property he wishes sold if less than the whole, but if the owner or possessor does not make such a designation, then the county treasurer shall sell the said real estate so offered for sale in its entirety.

History: En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

15-17-203. Bid of person once refusing to make payment to be rejected. The bid of any person refusing to make the payment for the property purchased by him must not be received on the sale of any property advertised in the delinquent tax list of that year.

History: En. Sec. 117, p. 111, L. 1891; re-en. Sec. 3884, Pol. C. 1895; re-en. Sec. 2640, Rev. C. 1907; re-en. Sec. 2193, R.C.M. 1921; re-en. Sec. 2193, R.C.M. 1935; R.C.M. 1947, 84-4126.

15-17-204. Certificate of sale by treasurer — signature — filing. (1) After receiving the amount of taxes and costs, the treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and the year of the assessment and specifying the time when the purchaser will be entitled to a deed.

(2) The certificate must be signed by the county treasurer and one copy delivered to the purchaser and the other filed in the office of the county clerk and recorder.

(3) On receiving the certificate of sale, the county clerk and recorder must file it and make an entry in a book similar to that required of the treasurer.

History: (1)En. Sec. 118, p. 111, L. 1891; re-en. Sec. 3885, Pol. C. 1895; re-en. Sec. 2641, Rev. C. 1907; re-en. Sec. 2194, R.C.M. 1921; Cal. Pol. C. Sec. 3776; re-en. Sec. 2194, R.C.M. 1935; Sec. 84-4127, R.C.M. 1947; (2)En. Sec. 119, p. 112, L. 1891; re-en. Sec. 3886, Pol. C. 1895; re-en. Sec. 2642, Rev. C. 1907; re-en. Sec. 2195, R.C.M. 1921; re-en. Sec. 2195, R.C.M. 1935; Sec. 84-4128, R.C.M. 1947; (3)En. Sec. 125, p. 113, L. 1891; re-en. Sec. 3892, Pol. C. 1895; re-en. Sec. 2648, Rev. C. 1907; re-en. Sec. 2204, R.C.M. 1921; re-en. Sec. 2204, R.C.M. 1935; Sec. 84-4135, R.C.M. 1947; R.C.M. 1947, 84-4127, 84-4128, 84-4135.

15-17-205. Treasurer to record description of land sold. (1) The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate.

(2) If taxes are paid subsequent to prior tax sale certificate before such taxes become delinquent by anyone other than the record owner of the land or to whom the land was assessed, the county treasurer shall make an entry in such book, opposite the name of such record owner of the land or to whom the land was assessed, the date of such payment, the name of the person making such payment, and the amount paid. Such book must be open to public inspection without fee during office hours when not in actual use.

History: En. Sec. 120, p. 112, L. 1891; re-en. Sec. 3887, Pol. C. 1895; re-en. Sec. 2643, Rev. C. 1907; re-en. Sec. 2196, R.C.M. 1921; re-en. Sec. 2196, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1939; R.C.M. 1947, 84-4129.

15-17-206. Lien of state — vesting and divesting. On filing the certificate with the county clerk and recorder, the lien of the state vests in the purchaser and is only divested by the payment to him or to the county treasurer for his use of the purchase money and ⅔ of 1% additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R.C.M. 1921; re-en. Sec. 2197. R.C.M. 1935; amd. Sec. 1, Ch. 8, L. 1967; R.C.M. 1947, 84-4130.

15-17-207. County as purchaser. In case there is no purchaser in good faith for the same, as provided in this code, on the first day that the property is offered for sale, then the whole amount of the property assessed must be struck off to the county as the purchaser and the duplicate certificate thereof delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the county is a purchaser, and in such case, the county treasurer must make an entry "sold to the county" on the duplicate assessment book opposite the tax and he must be credited with the amount thereof in the settlement.

History: En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

Cross-References

Assignment of rights by county, 15-17-303.

Assessment of county tax deed lands, 15-17-304.

Redemption of property sold to county, 15-18-104.

County authorized to acquire property by taxation, 70-1-204.

Payment of delinquent irrigation district assessments, 85-7-2136.

Issuance of debenture certificate to irrigation district when land struck off to county, 85-7-2152.

Payment of delinquent drainage district assessments, 85-8-601.

15-17-208. Assignment of county's interest. The interest of the county in any property purchased at a tax sale shall be assigned by the county treasurer as provided by 15-17-303 upon the payment of the taxes, penalties, costs, and interest specified in said section.

History: En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

Part 3

Procedure After Sale

15-17-301. Resale when purchaser does not make payment. If the purchaser does not pay the tax and costs before 10 p.m. of the following day, the property, on the next sale day before the regular sale, must be resold for taxes and costs.

History: En. Sec. 116, p. 111, L. 1891; re-en. Sec. 3883, Pol. C. 1895; re-en. Sec. 2639, Rev. C. 1907; re-en. Sec. 2192, R.C.M. 1921; re-en. Sec. 2192, R.C.M. 1935; R.C.M. 1947, 84-4125.

15-17-302. Disposition of money from sale or lease of tax deed lands. All moneys received from the sale or lease of tax deed lands or of any lands received in exchange shall be paid into the county treasury and shall be credited to each fund as the same would have been credited had the moneys so received been paid as taxes upon said land acquired by the county by tax deed or upon the lands exchanged, and any surplus after paying all taxes with interest and penalties shall belong to the county.

History: En. Sec. 2, Ch. 65, L. 1933; re-en. Sec. 2008.2, R.C.M. 1935; R.C.M. 1947, 84-4140.

Cross-References

Crediting of proceeds to irrigation district, 85-7-2152.

15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who pays the amount for which the same was bid, with interest upon the original tax at the rate of 5/6 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. The county treasurer shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ...., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ...., 19.., for the purpose of liquidating assessment, the following described parcel of land, situate in the county of ...., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ...., and the same still remaining unredeemed, and on this day .... having paid into the treasury of such county the amount for which the same was bid, together with all subsequent delinquent taxes, penalties, costs, and interest amounting in all to .... dollars.

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title, and interest of the county of ...., state of Montana, acquired in such lands under and by virtue of the sale to ...., his heirs and assigns forever, together with all the rights, powers, and privileges of the county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 19...

.... (County Treasurer)"

(2) If the certificate described in subsection (1) becomes lost by accident or destroyed by the assignee, the county treasurer shall issue a duplicate certificate to the assignee after the county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

(3) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued by March 5, 1917, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at tax sale may now have.

(4) As to any land received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged.

History: (1), (2)En. Sec. 1, Ch. 151, L. 1917; re-en. Sec. 2207, R.C.M. 1921; re-en. Sec. 2207, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1937; amd. Sec. 1, Ch. 24, L. 1939; amd. Sec. 1, Ch. 11, L. 1947; Sec. 84-4138, R.C.M. 1947; (3)En. Sec. 2, Ch. 151, L. 1917; re-en. Sec. 2208, R.C.M. 1921; re-en. Sec. 2208, R.C.M. 1935; Sec. 84-4139, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1933; re-en. Sec. 2208.3, R.C.M. 1935; Sec. 84-4141, R.C.M. 1947; R.C.M. 1947, 84-4138, 84-4139, 84-4141; amd. Sec. 10, Ch. 581, L. 1979; amd. Sec. 3, Ch. 576, L. 1981; amd. Sec. 3, Ch. 6, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendment: Increased the interest on delinquent taxes from ⅔ of 1% per month to 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Cross-References

Assignment of county's interest, 15-17-208.

Purchase by irrigation district, 85-7-2158.

15-17-304. Assessment of county tax deed lands. In case a tax sale certificate on property assessed for taxes is purchased by the county or otherwise, under part 2, it must be assessed for taxes the next year in the same manner as if it had not been so purchased. If the taxes resulting from such assessment are not paid when such taxes become due, said property shall again be sold, in manner as above described; and said assessment of such property and the sale of same, when the said taxes have not been paid upon coming due or the property redeemed, shall be continued until the time when such property shall have been redeemed from such sales. No tax deed shall issue to any purchaser other than the county under said sales until the applicant for such tax deed shall have paid and discharged all taxes, penalty, and interest accumulated at the time of such application. Purchasers of certificates of tax sale for years subsequent to the oldest outstanding tax sales certificate shall have the same privilege of redemption of such oldest outstanding tax sales certificate as is the privilege of the original owner of the property. Nothing herein contained shall be construed to apply to holders of tax certificates, other than counties, as of February 25, 1937.

History: En. Sec. 153, p. 119, L. 1891; re-en. Sec. 3922, Pol. C. 1895; re-en. Sec. 2678, Rev. C. 1907; re-en. Sec. 2231, R.C.M. 1921; Cal. Pol. C. Sec. 3813; re-en. Sec. 2231, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1937; R.C.M. 1947, 84-4186.

Cross-References

Redemption of property sold to county, 15-18-104.

Issuance of annual debenture certificates for delinquent irrigation district exemptions, 85-7-2157.

15-17-305. No sale unless directed by county commissioners. In case an assessment is made under 15-17-304 and the lands are not redeemed from a previous sale had under part 2, as provided by law, no sale must be had under the assessment authorized by 15-17-304 unless directed by the board of county commissioners.

History: En. Sec. 154, p. 119, L. 1891; re-en. Sec. 3923, Pol. C. 1895; re-en. Sec. 2679, Rev. C. 1907; re-en. Sec. 2232, R.C.M. 1921; Cal. Pol. C. Sec. 3814; re-en. Sec. 2232, R.C.M. 1935; R.C.M. 1947, 84-4187; amd. Sec. 9, Ch. 79, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, inserted "of county commissioners".

15-17-306 through 15-17-310 reserved.

15-17-311. Sale not voided by misnomer of ownership. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof affects the sale or renders it void or voidable.

History: En. Sec. 148, p. 118, L. 1891; re-en. Sec. 3916, Pol. C. 1895; re-en. Sec. 2672, Rev. C. 1907; re-en. Sec. 2225, R.C.M. 1921; Cal. Pol. C. Sec. 3807; re-en. Sec. 2225, R.C.M. 1935; R.C.M. 1947, 84-4180.

15-17-312. Voided sale — refund to purchaser. (1) Where a sale of land for delinquent taxes thereon is declared void by judgment of court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the sale or by any assignee of the state, county, city, town, or district upon taking the assignment shall, with interest at the rate of 8% per annum from the date of such payment, be refunded to the purchaser or owner of such tax certificate upon the order of the chairman of the board of county commissioners of the county in which such land lies.

(2) The county shall then have a lien upon said property for the legal taxes on said property for the year in which it was sold, together with the penalty and interest; and so much of such money as has been paid to the state, city, town, or district by the treasurer of such county shall be charged to the state, city, town, or district by such treasurer and deducted from the

next money due the state, city, town, or district, respectively, on account of taxes paid or collected. Purchasers of such certificate or owners thereof by assignment where sales have been made by cities or towns which by resolution or ordinance collect their own taxes instead of having the same collected by the county treasurer shall be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor, with proper charges and deductions against the respective funds of the said city or town, upon the next collection of taxes by said city or town.

(3) If such purchaser or owner of such certificate after such purchase or assignment from the state, county, city, town, or district has paid the taxes, penalty, and interest upon such piece or parcel of land, he or his assignee thereof shall have a lien upon such piece or parcel for the amount of taxes, penalty, and interest so paid, with interest as now provided by law to be collected upon delinquent taxes, which lien shall have the same priority as is now provided by law; and if he is in possession of such piece or parcel of land, he shall not be ejected therefrom until such amount and interest and penalty shall be paid.

History: **En. Sec. 1, Ch. 131, L. 1927; re-en. Sec. 2197.1, R.C.M. 1935; R.C.M. 1947, 84-4131.**

Parts 4 through 8 reserved

Part 9

Sale of Personal Property

Part Cross-References

Applicable to collection of liens for county licenses, 7-21-2104.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

15-17-901. Sale of personal property for delinquent taxes. (1) The tax on personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods provided for does not bar the right to resort to either or both of the other methods. Any of the methods provided for may be used until the full amount of the tax is collected.

(2) The provisions of this part and 15-16-113 apply to such seizure and sale.

(3) The sale must be at public auction and of a sufficient amount of the property to pay the taxes, percentages, and costs.

(4) For seizing or selling personal property, the treasurer may charge in each case the sum of $3 for the use of the county and the same mileage as is allowed by law to the sheriff of the county and reasonable expenses for seizing, handling, keeping, or caring for any property so seized or sold.

(5) On the payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: **(1)En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec.**

1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; Sec. 84-4202, R.C.M. 1947; (2)En. Sec. 3942, Pol. C. 1895; re-en. Sec. 2685, Rev. C. 1907; re-en. Sec. 2240, R.C.M. 1921; Cal. Pol. C. Sec. 3822; re-en. Sec. 2240, R.C.M. 1935; Sec. 84-4203, R.C.M. 1947; (3)En. Sec. 135, p. 116, L. 1891; re-en. Sec. 3902, Pol. C. 1895; re-en. Sec. 2658, Rev. C. 1907; re-en. Sec. 2241, R.C.M. 1921; re-en. Sec. 2241, R.C.M. 1935; Sec. 84-4204, R.C.M. 1947; (4)En. Sec. 137, p. 116, L. 1891; re-en. Sec. 3904, Pol. C. 1895; re-en. Sec. 2660, Rev. C. 1907; re-en. Sec. 2243, R.C.M. 1921; re-en. Sec. 2243, R.C.M. 1935; Sec. 84-4205, R.C.M. 1947; (5)En. Sec. 138, p. 116, L. 1891; re-en. Sec. 3905, Pol. C. 1895; re-en. Sec. 2661, Rev. C. 1907; re-en. Sec. 2244, R.C.M. 1921; re-en. Sec. 2244, R.C.M. 1935; Sec. 84-4206, R.C.M. 1947; R.C.M. 1947, 84-4202(3), 84-4203, 84-4204, 84-4205, 84-4206.

15-17-902. Deposit of excess proceeds from sale. All excess over the taxes, percent, and costs of the proceeds of any such sale must be returned to the owner of the property sold and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns.

History: En. Sec. 139, p. 116, L. 1891; re-en. Sec. 3906, Pol. C. 1895; re-en. Sec. 2662, Rev. C. 1907; re-en. Sec. 2245, R.C.M. 1921; re-en. Sec. 2245, R.C.M. 1935; R.C.M. 1947, 84-4207.

15-17-903. Unsold portion to remain at risk of owner. The unsold portion of any property may be left at the place of sale at the risk of the owner.

History: En. Sec. 140, p. 116, L. 1891; amd. Sec. 3907, Pol. C. 1895; re-en. Sec. 2663, Rev. C. 1907; re-en. Sec. 2246, R.C.M. 1921; re-en. Sec. 2246, R.C.M. 1935; R.C.M. 1947, 84-4208.

CHAPTER 18

OWNERSHIP INTERESTS IN LAND SOLD FOR TAXES

Part 1 — Redemption

Section
15-18-101. Time for redemption.
15-18-102. Redemption from tax sales.
15-18-103. Piecemeal redemption of land sold for taxes.
15-18-104. Conditions of redemption of property sold to county.
15-18-105. Redemption to be made in lawful money.
15-18-106. Treasurer's report of persons entitled to redemption money.
15-18-107. Clerk to note redemptions in book.
15-18-108. Distribution of redemption proceeds.

Part 2 — Issuing a Tax Deed

15-18-201. Treasurer's certificate after time for redemption passes.
15-18-202. Notice of application for tax deed.
15-18-203. Application for tax deed by local governing body.
15-18-204. Affidavit of notice.
15-18-205. Form of tax deed — prima facie evidence.

Part 3 — Action for Tax Deed

15-18-301. Action to procure tax deed.
15-18-302. Commencement of tax deed action — necessary parties.
15-18-303. Lis pendens to be filed.
15-18-304. Form and service of summons.
15-18-305. Defense to action — redemption of parcels.

15-18-306. No default judgments — costs.
15-18-307. Judgment — order for deed.
15-18-308. Form of tax deed.
15-18-309. Effect of deed.

Part 4 — Quiet Title

15-18-401. Action to quiet title to tax deed property — notice.
15-18-402. Procedure in quiet title actions.
15-18-403. Title conveyed by deed — procedure to cure defects.
15-18-404. County action to quiet title.

Chapter Cross-References

Interest of purchaser at tax sale when land sold was being purchased from the state, 77-2-315.

Part 1

Redemption

Part Cross-References

Redemption of property sold for delinquent irrigation district assessment, 85-7-2151.

Redemption of property sold for delinquent drainage district assessment, 85-8-603.

15-18-101. Time for redemption. A redemption of the property sold may be made by the owner or any party having any interest in or lien upon such property within 36 months from the date of purchase or at any time prior to the giving of the notice and the application for a deed as provided in this chapter.

History: En. Sec. 122, p. 113, L. 1891; amd. Sec. 3889, Pol. C. 1895; re-en. Sec. 2645, Rev. C. 1907; re-en. Sec. 2201, R.C.M. 1921; Cal. Pol. C. Sec. 3780; amd. Sec. 1, Ch. 125, L. 1933; re-en. Sec. 2201, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1941; R.C.M. 1947, 84-4132.

Cross-References

Suspension of property taxes for persons in military service, 10-1-606.

Notice of application for tax deed, 15-18-202.

Period of redemption for property sold for delinquent irrigation district assessment, 85-7-2163.

15-18-102. Redemption from tax sales. In all cases where real estate has been sold for delinquent taxes, the purchaser or his assignee at such tax sale may subsequent thereto pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser or his assignee at such tax sale, with interest thereon at the rate of 8% per annum from the date of the payment of such taxes. In all notices of application for tax deed, the applicant shall state, in addition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate of 8% per annum from the date of such payment, and no redemption shall be made until the amount of such sale with interest and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands.

History: En. Sec. 1, Ch. 98, L. 1913; re-en. Sec. 2210, R.C.M. 1921; re-en. Sec. 2210, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1939; R.C.M. 1947, 84-4154.

Cross-References

Payment of delinquent irrigation district assessments credited against redemption, 85-7-2136.

Payment of delinquent drainage district assessments credited against redemption, 85-8-601.

15-18-103. Piecemeal redemption of land sold for taxes. (1) Whenever any person shall desire to redeem from a tax sale and pay all subsequent taxes upon any lot, piece, or parcel of real estate which said person shall own or hold a mortgage or other lien against or when such person shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment. In case the real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid the same as if said property had been separately assessed.

(2) Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919; re-en. Sec. 2211, R.C.M. 1921; amd. Sec. 1, Ch. 48, L. 1923; re-en. Sec. 2211, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1941; amd. Sec. 16, Ch. 52, L. 1977; R.C.M. 1947, 84-4155.

15-18-104. Conditions of redemption of property sold to county. In case property is sold to the county as purchaser pursuant to 15-17-207 and is subsequently assessed pursuant to 15-17-304, no person must be permitted to redeem from such sale except upon payment also of the amount of such subsequent assessment, costs, fees, and interest.

History: En. Sec. 155, p. 120, L. 1891; re-en. Sec. 3924, Pol. C. 1895; re-en. Sec. 2680, Rev. C. 1907; re-en. Sec. 2233, R.C.M. 1921; Cal. Pol. C. Sec. 3815; re-en. Sec. 2233, R.C.M. 1935; R.C.M. 1947, 84-4188.

15-18-105. Redemption to be made in lawful money. Redemption must be made in lawful money. When paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate and pay it on demand to the person or his assignees.

History: En. Sec. 123, p. 113, L. 1891; re-en. Sec. 3890, Pol. C. 1895; re-en. Sec. 2646, Rev. C. 1907; re-en. Sec. 2202, R.C.M. 1921; Cal. Pol. C. Sec. 3781; re-en. Sec. 2202, R.C.M. 1935; R.C.M. 1947, 84-4133.

15-18-106. Treasurer's report of persons entitled to redemption money. In each report the treasurer makes to the board of county commissioners, he must name the persons entitled to redemption money and the amount due to each.

History: En. Sec. 124, p. 113, L. 1891; re-en. Sec. 3891, Pol. C. 1895; re-en. Sec. 2647, Rev. C. 1907; re-en. Sec. 2203, R.C.M. 1921; re-en. Sec. 2203, R.C.M. 1935; R.C.M. 1947, 84-4134.

15-18-107. Clerk to note redemptions in book. On the presentation of the receipt of the person named in the certificate or of the county treasurer for his use of the total amount of redemption money, the county clerk and recorder must mark the word "redeemed", the date, and by whom redeemed on the certificate and in the margin of the book where the entry of the certificate is made.

History: **En. Sec. 126, p. 113, L. 1891; re-en. Sec. 3893, Pol. C. 1895; re-en. Sec. 2649, Rev. C. 1907; re-en. Sec. 2205, R.C.M. 1921; re-en. Sec. 2205, R.C.M. 1935; R.C.M. 1947, 84-4136.**

15-18-108. Distribution of redemption proceeds. Whenever property sold to the county pursuant to the provisions of chapter 17 is redeemed as herein provided, the moneys received on account of such redemption must be distributed as follows: The original tax and the penalty and interest thereon paid in redemption must be apportioned and prorated to the credit of all the various funds, including state, county, school, school district, city, or town, in the ratio of their respective shares of the original tax. The county treasurer must keep an accurate account of all money paid in redemption of property sold to the county and must, on the first Monday of June in each year, make a detailed report, verified by his affidavit, of each account, year for year, to the state auditor in such form as the state auditor may desire. Whenever the county receives from the county treasurer any grant of property so sold for taxes, the same shall be recorded by the county clerk and recorder free of charge, at the request of the county treasurer and shall be immediately reported by the county treasurer to the board of county commissioners.

History: **En. Sec. 156, p. 120, L. 1891; re-en. Sec. 3925, Pol. C. 1895; re-en. Sec. 2681, Rev. C. 1907; re-en. Sec. 2234, R.C.M. 1921; Cal. Pol. C. Sec. 3816; amd. Sec. 1, Ch. 164, L. 1929; re-en. Sec. 2234, R.C.M. 1935; R.C.M. 1947, 84-4189.**

Cross-References

Distribution of redemption money for municipal taxes, 7-6-4414.

Definition of "school district", 20-15-403.

Distribution of redemption money to irrigation district, 85-7-2154.

Part 2

Issuing a Tax Deed

Part Cross-References

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Issuance of certificate of purchase when tax deed issued for land being purchased from state, 77-2-315.

Issuance of tax deed for delinquent irrigation district assessment, 85-7-2159, 85-7-2163.

15-18-201. Treasurer's certificate after time for redemption passes. If the property is not redeemed in the time allowed by law for its redemption, the county treasurer or his successor in office must make to the purchaser or his assignee a deed of the property, reciting in the deed substantially the matters contained in the certificate and that no person has redeemed the property during the time allowed for its redemption. The county treasurer is entitled to receive from the purchaser for the use of the county $3 for making such deed. No charge must be made by the county treasurer for the making of any such deed where the county is the purchaser and the acknowledgment of all such deeds must be taken by the county clerk and recorder free of charge.

History: **En. Sec. 127, p. 113, L. 1891; re-en. Sec. 3894, Pol. C. 1895; re-en. Sec. 2650, Rev. C. 1907; re-en. Sec. 2206, R.C.M. 1921; Cal. Pol. C. Sec. 3785; re-en. Sec. 2206, R.C.M. 1935; R.C.M. 1947, 84-4137.**

Cross-References

Time for redemption, 15-18-101.

15-18-202. Notice of application for tax deed. (1) The purchaser of property sold for delinquent taxes or his assignee must, at least 60 days previous to the expiration of the time for redemption or at least 60 days before he applies for a deed, serve upon the owner of the property purchased, if known, any purchaser of the property under contract for deed, if known, and upon the person occupying the property, if the said property is occupied, and if the records in the office of the county clerk and recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages or, if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice stating that said property or a portion thereof has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount due, and the time when the right of redemption will expire or when the purchaser will apply for a tax deed. The owner of the property or the mortgagee or the assignee of said mortgagee has the right of redemption indefinitely, until such notice has been given and the deed applied for, upon the payment of fees, percentages, penalties, and costs required by law.

(2) Notice to any owner, purchaser of property under contract for deed, mortgagee, or assignee of mortgagee shall be given by registered or certified letter addressed to such owner, purchaser, mortgagee, or assignee at the post-office address of said owner, purchaser, mortgagee, or assignee as disclosed by the mortgage records in the office of the county clerk and recorder. In case of unoccupied property or a mining claim, such notice must be by registered or certified mail deposited in the post office, addressed to any known owner residing in or outside of said county, with the postage thereon prepaid, at least 60 days before the expiration of the time for redemption or at least 60 days before the purchaser applies for such tax deed, in addition to notice to the mortgagee or assignee of mortgagee in the manner and as hereby is provided.

(3) In all cases where the post-office address of the owner, purchaser, mortgagee, or assignee is unknown, the applicant shall publish once a week for 2 successive weeks in a newspaper published in the county where the property is situated a notice substantially in the following form:

Notice of Application for Tax Deed

Notice is hereby given that the undersigned will on the .... day of ...., 19..., apply to the county treasurer of .... county for a tax deed to the following described property, to wit:

(Describe property)

Amount due $......
Date ....

..........(Applicant)

(4) The first publication of such notice must be made at least 60 days before the date of redemption or application for said deed.

(5) In all cases due proof of service of notice in whatever manner given, supported by the affidavit required by law, must be filed immediately with the clerk and recorder of the county in which the property is situated and be kept as a permanent file in his office, and such proof of notice when so filed shall be prima facie evidence of the sufficiency of the notice.

History: En. Sec. 128, p. 114, L. 1891; amd. Sec. 3895, Pol. C. 1895; amd. Sec. 1, Ch. 79, L. 1905; re-en. Sec. 2651, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1917; amd. Sec. 1, Ch. 87, L. 1921; re-en. Sec. 2209, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1929; amd. Sec. 1, Ch. 190, L. 1933; re-en. Sec. 2209, R.C.M. 1935; R.C.M. 1947, 84-4151; amd. Sec. 14, Ch. 526, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence of (1), after "if known" inserted "any purchaser of the property under contract for deed, if known,"; near beginning of (2), after "Notice" substituted "to" for "of"; after "owner" inserted "purchaser of property under contract for deed"; after "addressed to such" inserted "owner, purchaser,"; after "said owner" inserted "purchaser"; and in (3), after "owner" inserted "purchaser".

Cross-References

Fee for tax deed, 7-6-2131.

Time for redemption, 15-18-202.

15-18-203. Application for tax deed by local governing body. Whenever a county, city, or town becomes the purchaser of property sold for delinquent taxes and is the holder of the certificate of sale when the time for redemption expires, the board of county commissioners, city or town council or commission at any time thereafter deemed proper may order and direct the county clerk and recorder, city or town clerk to apply to the county or city treasurer or town clerk, as the case may be, for the issuance to the county, city, or town of a tax deed for such property. It shall then be the duty of the county clerk and recorder, city or town clerk to give or post and cause to be published the proper notice of the application for such tax deed and to make the proper proof thereof, all in the manner required by 15-18-202. The board of county commissioners, city or town council or commission cannot be compelled to order and direct the county clerk and recorder, city, or town clerk to apply to the county or city treasurer or town clerk, as the case may be, for the issuance of a tax deed within 3 years after the time for redemption has expired unless the board of county commissioners, city or town council or commission deems it proper so to do.

History: En. Sec. 1, Ch. 92, L. 1927; amd. Sec. 1, Ch. 49, L. 1933; re-en. Sec. 2209.1, R.C.M. 1935; R.C.M. 1947, 84-4152.

Cross-References

County authorized to acquire property by taxation, 70-1-204.

15-18-204. Affidavit of notice. No deed of the property sold at a delinquent tax sale shall be issued by the county treasurer to the purchaser of the property until the proof of service of notice of application for tax deed has been filed with the county clerk and recorder as required by 15-18-202. Such purchaser is entitled to receive the sum of $3 for the service of said notice and the making of said affidavit required by 15-18-202, which sum of $3 must be paid by the redemptioner at the same time and in the same manner as other costs, percentages, penalties, and fees are paid.

History: En. Sec. 129, p. 114, L. 1891; re-en. Sec. 3896, Pol. C. 1895; re-en. Sec. 2652, Rev. C. 1907; re-en. Sec. 2212, R.C.M. 1921; re-en. Sec. 2212, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1947, 84-4156.

15-18-205. Form of tax deed — prima facie evidence. (1) The form of a tax deed of an estate in real property, executed by a county treasurer, may be made in substance as follows:

This indenture, made by and between .... (insert name of treasurer), county treasurer of the county of .... (insert name of county), in the state of Montana, the party of the first part, and .... (insert name of grantee), the party of the second part, witnesseth:

Whereas, there was assessed for the year .... (insert year) in the name of .... (insert name) that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of .... (insert amount) dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to .... (insert name of grantee) on the .... (insert day) of .... (insert month), A.D. .... (insert year) for the sum of .... (insert amount) dollars and certificates of sale were duly issued and filed as required by law; and

Whereas, no redemption from said sale has been made and the said grantee has given the necessary notice of application for tax deed as required by law;

Now, therefore, I, ... (insert name of treasurer), county treasurer of the county of .... (insert name of county), in the state of Montana, for and in consideration of the sum of .... (insert amount) dollars paid do grant to .... (insert name of grantee) all the property situated in .... (insert name of county) County, state of Montana, described as follows: .... (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this .... (insert day) day of .... (insert month), A.D. .... (insert year).

....
County treasurer of ...... County
State of Montana

(2) A tax deed executed in the form as provided in this section, when duly acknowledged and proved, is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the property was equalized as required by law;

(c) the taxes were levied in accordance with law;

(d) the taxes were not paid;

(e) notice of tax sale was given and published and property sold at the proper time and place as prescribed by law;

(f) the property was not redeemed, and the proper notice of application for deed has been served or posted as required by law;

(g) the person who executed the deed was the proper officer;

(h) where the real estate was sold to pay taxes on personal property, the real estate belonged to the person liable to pay the tax.

History: En. Sec. 1748, 5th Div. Comp. Stat. 1887; amd. Sec. 130, p. 115, L. 1891; re-en. Sec. 3897, Pol. C. 1895; re-en. Sec. 2653, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1919; re-en. Sec. 2213, R.C.M. 1921; Cal. Pol. C. Sec. 3786; re-en. Sec. 2213, R.C.M. 1935; R.C.M. 1947, 84-4157.

Part 3

Action for Tax Deed

Part Cross-References

Issuance of certificate of purchase when tax deed issued for land being purchased from state, 77-2-315.

15-18-301. Action to procure tax deed. The purchaser of property sold for delinquent taxes or his assigns desiring a tax deed thereto may at his option, in addition to all other methods now provided by law, bring and maintain an action in the district court of the county in which such real property is situated, which said action shall be brought and except as herein provided shall be prosecuted as in other civil actions. Before bringing the action, the plaintiff, unless it be the county, shall pay all delinquent taxes assessed subsequent to the date he procured the certificate of sale which may then be due to the county.

History: En. Sec. 1, Ch. 176, L. 1933; re-en. Sec. 2215.1, R.C.M. 1935; R.C.M. 1947, 84-4162.

15-18-302. Commencement of tax deed action — necessary parties. (1) The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiff and all persons having an interest in said property or in any part thereof, either as owner, encumbrancer, or otherwise, whose interest shall appear of record in the office of the county clerk and recorder of the county in which the action is instituted, together with the county treasurer of said county, shall be named as defendants.

(2) If the county is the applicant, the action shall be brought in the name of the county clerk and recorder of said county.

(3) The complaint shall, among other things, set forth the description of the real property involved, the year in which the delinquent taxes were assessed, the amount for which the property was sold, the amount of taxes subsequently paid, the date of the sale of said property, the person to whom sold, the nature of the interest in each separate part of said land held by the respective defendants or any of them, and the amount of money necessary to redeem the said lands from said sales.

(4) Several tracts of land, contiguous or noncontiguous and whether owned by different defendants and whether sold at the same time or at different times, may be set forth in one complaint, and all persons claiming any title to or interest in or lien upon any of said premises or any part thereof, although their claims are independent and not in common and do not cover the same tracts, may be joined as defendants.

(5) The rule of procedure outlined by this section shall apply to all actions brought to procure a tax deed hereunder and that may now be pending as well as all actions hereafter commenced under the provisions of this section.

History: En. Sec. 2, Ch. 176, L. 1933; re-en. Sec. 2215.2, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1937; R.C.M. 1947, 84-4163.

15-18-303. Lis pendens to be filed. Upon the filing of the complaint, a notice of the pendency of said action shall be recorded in the office of the county clerk and recorder of the county in which the action is pending, and the lis pendens so recorded shall be filed with the clerk of the court and shall become a part of the judicial record of said action.

History: En. Sec. 3, Ch. 176, L. 1933; re-en. Sec. 2215.3, R.C.M. 1935; R.C.M. 1947, 84-4164; amd. Sec. 67, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "judicial record" for "judgment roll".

15-18-304. Form and service of summons. Upon the filing of the complaint, a summons must be issued under the seal of the court in manner, form, and substance as in civil actions, with the additional statement: "This action is brought for the purpose of procuring a tax deed from the county treasurer of .... County (name of county), Montana, for the lands and premises described as: (description of the land)." Service of said summons shall be made as in civil actions.

History: En. Sec. 4, Ch. 176, L. 1933; re-en. Sec. 2215.4, R.C.M. 1935; R.C.M. 1947, 84-4165.

Cross-References

Summons in civil action, Rule 4(c), M.R.Civ.P. (see Title 25, ch. 20).

Service of summons, Rule 4(d), M.R.Civ.P. (see Title 25, ch. 20).

15-18-305. Defense to action — redemption of parcels. Any defendant may appear in the action within the time provided by law for appearances in civil actions, may set up any defense to the action he may have, and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of the land. Any defendant to the action may make redemption of the lands from the tax sale by paying the total amount of delinquent taxes and penalties which plaintiff has paid, with interest thereon at 8% a year from date of payment, together with costs of the action. Upon such payment, a certificate of redemption must be issued by the county treasurer to the defendant so paying, and thereupon the action must be dismissed. Whenever a defendant desires to redeem from a tax sale and pay all subsequent taxes upon any lot, piece, or parcel of real estate which such defendant owns or holds a mortgage or other lien against or has any interest in, the county treasurer of the county in which such real estate is situated shall permit such redemption and payment. In case the real estate has been assessed against any other property and is a lien thereon, then the county treasurer shall compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid, the same as if the property had been separately assessed. Any personal property tax which is a lien upon such real estate must be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 5, Ch. 176, L. 1933; re-en. Sec. 2215.5, R.C.M. 1935; amd. Sec. 17, Ch. 52, L. 1977; amd. Sec. 8, Ch. 126, L. 1977; R.C.M. 1947, 84-4166; amd. Sec. 11, Ch. 581, L. 1979.

Cross-References

Allowable costs, 25-10-201.

Appearance in civil action, Rule 12, M.R.Civ.P. (see Title 25, ch. 20).

15-18-306. No default judgments — costs. No judgment in any such action shall be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings in said action. In all cases where the county is not the applicant the court shall allow the successful party his costs, to be fixed by the court, including a reasonable attorney's fee.

History: En. Sec. 6, Ch. 176, L. 1933; re-en. Sec. 2215.6, R.C.M. 1935; R.C.M. 1947, 84-4167.

15-18-307. Judgment — order for deed. The court by its judgment shall ascertain and determine by proper findings that the land was duly assessed, the year for which it was assessed, the amount of the assessment thereof, that said land was sold for the delinquent taxes, that due notice of the sale of the land was given as provided by law, the date of the sale thereof, the person to whom sold, the amount for which it was sold, the fact of the assignment of the certificate of sale, if assigned, that the land or any part thereof has not been redeemed from said sale, if such be the case, and shall order and direct the county treasurer of said county to issue a deed of conveyance to the plaintiff for said land that the judgment so entered shall be binding and conclusive upon the defendants therein named. From and after the entry of the judgment, all defendants to said action shall be forever barred and enjoined from claiming or asserting any claim of any kind or nature whatsoever existing at the time of the entry of said judgment to the lands and premises described in said action or to any part or portion thereof.

History: En. Sec. 7, Ch. 176, L. 1933; re-en. Sec. 2215.7, R.C.M. 1935; R.C.M. 1947, 84-4168.

15-18-308. Form of tax deed. When a certified copy of the decree has been filed with the county treasurer, he must issue a tax deed for the real estate described in the judgment, which deed in substance shall be as follows:

This indenture, made by and between .... (insert name of treasurer), county treasurer of the county of .... (insert name of county), in the state of Montana, the party of the first part, and .... (insert name of grantee), the party of the second part, witnesseth:

Whereas, there was assessed for the year .... (insert year) in the name of .... (insert name) that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of .... (insert amount) dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to .... (insert name of grantee) on the .... (insert day) of .... (insert month), A.D. .... (insert year), for the sum of .... (insert amount) dollars and certificates of sale were duly issued and filed as required by law; and

Whereas, by virtue of a judgment and decree entered by the district court of the .... judicial district of the state of Montana in and for the county of .... (insert name of county) in an action wherein .... was plaintiff and .... defendant, a certified copy thereof being filed in my office, I, the said county treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands.

Now, therefore, I, ... (insert name of treasurer), county treasurer of the county of .... (insert name of county), in the state of Montana, for and in consideration of the sum of .... (insert amount) dollars paid do grant to .... (insert name of grantee) all the property situated in .... (insert name of county) County, state of Montana, described as follows: .... (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this .... (insert day) of .... (insert month), A.D. .... (insert year).

....
County treasurer of .... County
State of Montana

History: En. Sec. 8, Ch. 176, L. 1933; re-en. Sec. 2215.8, R.C.M. 1935; amd. Sec. 9, Ch. 126, L. 1977; R.C.M. 1947, 84-4169.

15-18-309. Effect of deed. The deed issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special, local improvement, irrigation, and drainage assessments levied against the property, payable after the execution of said deed, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period for redemption.

History: En. Sec. 9, Ch. 176, L. 1933; re-en. Sec. 2215.9, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1937; R.C.M. 1947, 84-4170.

Part 4

Quiet Title

15-18-401. Action to quiet title to tax deed property — notice. (1) In any action brought to set aside or annul any tax deed or to quiet title or to determine the rights of a purchaser, including the county, or his successors to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor, upon filing an affidavit, may obtain from the court an order directed to the person claiming to own the property or to have any interest in or lien upon said property or a right to redeem the same or claiming rights hostile to the tax title (which person is herein, for convenience, called the true owner), commanding him to:

(a) deposit in court to the use of the tax purchaser or his successors:

(i) the amount of all taxes, interest, and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him; and

(ii) the amount of all sums reasonably paid thereafter by said purchaser or his successors after 3 years from the date of said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties, and improvements is alleged by the plaintiff and as shall appear in said order; or

(b) show cause on a date to be fixed in said order, not exceeding 30 days from the date thereof, why such payments should not be made.

(2) Said affidavit shall set forth the place of residence of said true owners and whether they are in the state of Montana, if known to the plaintiff, or that the same is not known to the plaintiff.

(3) Said order shall be filed with the clerk and recorder and a copy served personally upon all persons shown in said affidavit to be residents of and in the state of Montana, and jurisdiction shall be acquired over all other persons by publishing the same once in a newspaper in the county and by posting the same in three public places in the county at least 10 days before the day fixed for the hearing and by leaving a copy with the county treasurer.

History: En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R.C.M. 1921; Cal. Pol. C. Sec. 3787; amd. Sec. 1, Ch. 85, L. 1927; re-en. Sec. 2214, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1947; R.C.M. 1947, 84-4158(part).

Cross-References

Costs allowed in actions involving title of real estate, 25-10-101, 25-10-102.

15-18-402. Procedure in quiet title actions. (1) Upon the hearing of the order to show cause, the court shall have jurisdiction to determine said amount and to make an order that the same be paid into court within a given time not exceeding 30 days after the making of said order. If such amount, when so determined, shall not be paid within the time fixed by said court, then said true owner shall be deemed to have waived any defects in the tax proceedings and any right of redemption, and thereupon, irrespective of any irregularities, defects, or omissions or total failure to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes and the giving of notices, including notices of redemption, or concerning tax deeds, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid), the title of such true owner shall not be quiet as against said purchaser or his successors and a decree shall be entered in said action quieting the title of said purchaser or his successor as against said true owner.

(2) If such payment shall be made into court and said true owner shall be successful in said action and said tax proceedings shall be held void, said sum shall be paid to the purchaser or his successors. If said true owner shall not be successful in said action and the title of said purchaser or his successors shall be sustained, said money shall be returned to said true owner.

(3) In actions to quiet title, when brought by the purchaser or the county or their successors, several tracts of land contiguous or noncontiguous and whether owned by different defendants may be set forth in one complaint, and all persons claiming any title to or interest in or lien upon any of said premises or any part thereof, although their said claims are independent and not in common and do not cover the same tracts, may be joined as defendants. The procedure in said action shall follow, as near as may be, the procedure specified in 70-28-101 through 70-28-109.

(4) In the final judgment, the court shall also determine the rights growing out of any additional taxes on said property accruing or being paid by either party during the pendency of said suit. In said suit the court shall have complete jurisdiction to fix the amount of taxes which should have been paid and to determine all questions necessary in granting full relief, including the power in appropriate cases to order any assessor or other tax officer to make and certify to the court a corrected or new assessment or to do any other act or thing necessary to enable the court to do complete justice in the premises. Errors may be reviewed on appeal from the final judgment.

History: En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R.C.M. 1921; Cal. Pol. C. Sec. 3787; amd. Sec. 1, Ch. 85, L. 1927; re-en. Sec. 2214, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1947; R.C.M. 1947, 84-4158(part).

15-18-403. Title conveyed by deed — procedure to cure defects. (1) All deeds executed more than 3 years after any tax sale shall be deemed to convey to the grantee the absolute title to the lands described therein as of the date of the expiration of 3 years following the date of sale, including all the right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to said real estate and including the right, if said tax deed or tax sale or any of the tax proceedings upon which said deed may be based shall be attacked and held irregular or void, to recover the unpaid taxes, interest, and penalties which would accrue if said tax proceedings had been regular and it was desired to redeem said property, free of all encumbrances except the lien for taxes which may have attached subsequent to the sale and except when the land is owned by the United States or the state, in which case it is prima facie evidence of the right of possession accruing as of the date of the expiration of such period for redemption.

(2) If any tax deed or deed purporting to be such has been or shall be issued more than 3 years and 30 days after any tax sale or attempted tax sale, the grantee may publish in any newspaper in the county published at the county seat or, if none, in any other newspaper, once a week for 2 weeks a notice entitled "a notice of claim of a tax title" which shall set forth a description of any property claimed to have been acquired by a tax deed; an estimate of the amount due thereon for taxes, interest, and penalties; and a statement that for further particulars reference is made to the records in the office of the county treasurer; also the name of the person claiming to have obtained a tax deed to said property and the name of the person in whose name said property was assessed or taxed and a statement that demand is made that such person shall, within 30 days after the first publication of said notice, pay to said claimant or to the county treasurer to his use the amount of the taxes, interest, and penalties as the same may appear in the records of the county treasurer or bring a suit to quiet his title or to set aside said tax deed or deeds. Any mistake in the amount or in any name specified in said notice shall not invalidate the same.

(3) If, within said period of 30 days, said taxes, interest, and penalties shall not have been paid or said suit brought, all defects in the tax proceedings and any right of redemption shall be deemed waived and thereupon the title to said property described in said notice and in the tax deed shall be valid and binding, irrespective of any irregularities, defects, or omissions or total failures to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes and the giving of notices including notices of redemption, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid).

History: En. Sec. 132, p. 115, L. 1891; re-en. Sec. 3899, Pol. C. 1895; re-en. Sec. 2655, Rev. C. 1907; re-en. Sec. 2215, R.C.M. 1921; Cal. Pol. C. Sec. 3788; amd. Sec. 2, Ch. 85, L. 1927; re-en. Sec. 2215, R.C.M. 1935; R.C.M. 1947, 84-4161.

15-18-404. County action to quiet title. Any county which has acquired or may acquire title to any land by tax deed may commence an action in the county to quiet title thereto. In such action several tracts of land contiguous or noncontiguous may be included in one complaint, and all persons claiming any title to, interest in, or lien upon any of said lands may be joined as defendants. The procedure in such action shall be as provided in 70-28-101 through 70-28-109. It shall be the duty of the county attorney, upon request of the board of county commissioners of the county, to promptly commence and prosecute to final judgment any and all such actions.

History: En. Sec. 4, Ch. 65, L. 1933; re-en. Sec. 2208.4, R.C.M. 1935; R.C.M. 1947, 84-4142.

Cross-References

Costs allowed in action involving title to real property, 25-10-101, 25-10-102.

County authorized to acquire property by taxation, 70-1-204.

CHAPTERS 19 THROUGH 22

RESERVED

CHAPTER 23

CENTRALLY ASSESSED PROPERTY

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Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Part 1

General Provisions

Part Cross-References

Metal mines gross proceeds to be assessed under this part, 15-23-807.

15-23-101. *(Temporary)* **Properties centrally assessed.** The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties;

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12. **(Subsection (6) applicable to taxable periods beginning after December 31, 1983.)**

15-23-101. *(Effective as provided in Compiler's Comment)* **Properties centrally assessed.** The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12. **(Subsection (6) applicable to taxable periods beginning after December 31, 1983.)**

History: En. 84-7801 by Sec. 1, Ch. 98, L. 1977; R.C.M. 1947, 84-7801; amd. Sec. 4, Ch. 686, L. 1979; amd. Sec. 3, Ch. 478, L. 1981; amd. Sec. 4, Ch. 683, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (6).

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

1981 Amendment: Added the language pertaining to property of public agencies to the end of (2).

Effective Date — Contingent on Congressional Action: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electric energy."

15-23-102. Independent appraisal option — notice of assessment — opportunity for conference — appeal. (1) The department of revenue may have property subject to the provisions of this chapter assessed by a qualified independent appraiser when both the department and the owner of the property subject to the assessment agree in writing:

(a) on a particular independent appraiser to do an appraisal;

(b) to share the costs of the independent appraisal; and

(c) to accept the results of the appraisal.

(2) (a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.

(b) Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment.

(c) Appeals from the final decision may be taken to the state tax appeal board.

History: En. 84-7802 by Sec. 2, Ch. 98, L. 1977; R.C.M. 1947, 84-7802; (1)En. Sec. 1, Ch. 253, L. 1983; amd. Sec. 15, Ch. 526, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 253 enacted (1). Chapter 526, in (2)(a), after "owner" inserted "and any purchaser under contract for deed".

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

State Tax Appeal Board, Title 15, ch. 2.

15-23-103. Due date of reports and returns — extensions. (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, or 15-23-701 shall be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201 shall be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days.

History: En. 84-7803 by Sec. 3, Ch. 98, L. 1977; amd. Sec. 2, Ch. 494, L. 1977; R.C.M. 1947, 84-7803; amd. Sec. 1, Ch. 606, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted proviso at beginning of subsection, after "15-23-502" deleted "15-23-602"; and inserted (2); amendment applicable to reports or returns filed after December 31, 1982.

15-23-104. Failure to file — estimate by department — penalty. If any person fails to file a report or return within the time established in 15-23-103 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating value under this section, the department may subpoena a person or his agent as specified in 15-1-302. An assessment based on estimated value is subject to review under 15-8-601. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund. The department will also inform its agents in the counties of the delinquency, and the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent.

History: En. 84-7804 by Sec. 4, Ch. 98, L. 1977; R.C.M. 1947, 84-7804; amd. Sec. 2, Ch. 606, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, after "return" changed "under" to "within the time established in", and after "15-23-103" deleted "by March 31"; amendment applicable to reports or returns filed after December 31, 1982.

15-23-105. Apportionment among counties. The department shall apportion the value of property assessed under 15-23-101, 15-23-202 or 15-23-403 among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper.

History: En. 84-7805 by Sec. 5, Ch. 98, L. 1977; R.C.M. 1947, 84-7805; amd. Sec. 5, Ch. 686, L. 1979.

15-23-106. Transmission to the counties. (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under 15-23-302, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county shall be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department.

History: En. 84-7806 by Sec. 6, Ch. 98, L. 1977; R.C.M. 1947, 84-7806; amd. Sec. 1, Ch. 238, L. 1981.

Compiler's Comments

1981 Amendment: Added the last phrase in (1)(c) requiring that 90% of the value of property be stated separately when a state airport is involved.

Cross-References

Transmittal of airline property tax — state airports, 67-1-303.

15-23-107. Amended assessment — transmission to counties. Whenever the valuation of centrally assessed property is revised under 15-8-601 or 15-23-102(2), the department shall, within 15 days following the final decision or order, transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located. The revision shall be immediately entered in the assessment book.

History: En. 84-7807 by Sec. 7, Ch. 98, L. 1977; R.C.M. 1947, 84-7807.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-23-108. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under this chapter.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(2).

15-23-109 and 15-23-110 reserved.

15-23-111. *(Applicable to taxable periods beginning after December 31, 1983)* **Centrally administered tax-exempt property.** The possession or beneficial use of tax-exempt property that exists in more than one county or more than one state must be administered under the provisions of this chapter.

History: En. Sec. 2, Ch. 683, L. 1983.

Compiler's Comments

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

Cross-References

State and other exempt property, Title 15, ch. 24, part 12.

15-23-112 through 15-23-114 reserved.

15-23-115. Interest. If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-602, 15-23-701, or 15-23-802, the department shall inform its agents at the county level of such determination, and if any additional tax is due, there must be added thereto until paid in full interest at the rate of 1% a month or fraction thereof from the date the original tax was due and payable. In no instance will a taxpayer subject to imposition of interest pursuant to this section be also subject to the penalty and interest provisions contained in 15-16-102.

History: En. Sec. 1, Ch. 112, L. 1983.

15-23-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: **En. Sec. 1, Ch. 194, L. 1983.**

Part 2

Railroads

Part Cross-References

Taxable percentage of property of centrally assessed companies, 15-6-141.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Consolidated railroads subject to taxation, 69-14-512.

Leased or purchased railroads subject to taxation, 69-14-513.

Railroads extending lines into state subject to taxation, 69-14-536.

15-23-201. Assessment of railroads. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31 immediately preceding:

(1) the whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state and the whole number within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

(3) the width of the right-of-way;

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) the number, kind, and value of rolling stock owned and operated in the state;

(6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines; passenger, mail, express, baggage, freight, and other cars; or property owned or leased by such corporation, person, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and, if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) any other facts the department may require.

History: En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R.C.M. 1921; Cal. Pol. C. Sec. 3664; amd. Sec. 1, Ch. 7, L. 1925; re-en. Sec. 2131, R.C.M. 1935; amd. Sec. 23, Ch. 516, L. 1973; amd. Sec. 10, Ch. 98, L. 1977; amd. Sec. 1, Ch. 494, L. 1977; R.C.M. 1947, 84-801.

Cross-References

Where railroad property assessed, 15-8-407.

Due date of report, 15-23-103.

15-23-202. Assessment — how made. (1) The department must assess the franchise, roadway, roadbed, rails, rolling stock, and all other operating properties of all railroads operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department.

(2) In determining the taxable value of railroad property, the department may modify the percentage multiplier provided for in 15-6-141 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

History: En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R.C.M. 1921; Cal. Pol. C. Sec. 3665; re-en. Sec. 2132, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973; amd. Sec. 11, Ch. 98, L. 1977; R.C.M. 1947, 84-802; amd. Sec. 6, Ch. 686, L. 1979; amd. Sec. 2, Ch. 367, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Cross-References

Department to apportion value among counties, 15-23-105.

Value to be transmitted to counties, 15-23-106.

Part 3

Public Utilities

Part Cross-References

Taxable percentage of public utility property, 15-6-135, 15-6-137, 15-6-141.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

15-23-301. Officers of certain public utility companies to furnish statement to department. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power, or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right-of-way, and which constitute a single and continuous property throughout more than one county or state, must each year furnish the department a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on December 31 immediately preceding as follows:

(1) the whole number of miles of said property in the state and, where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association;

(2) the total value of the entire property and plant, both within and without the state, and the total value of that portion of the same within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) such other information regarding such property as may be required by the department.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R.C.M. 1921; re-en. Sec. 2138, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1939; amd. Sec. 25, Ch. 516, L. 1973; amd. Sec. 1, Ch. 50, L. 1974; amd. Sec. 1, Ch. 210, L. 1975; amd. Sec. 12, Ch. 98, L. 1977; R.C.M. 1947, 84-901.

Cross-References

When public utility property assessed, 15-8-406.

Due date of report, 15-23-103.

15-23-302. Repealed. Sec. 11, Ch. 686, L. 1979.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R.C.M. 1921; re-en. Sec. 2139, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1939; amd. Sec. 64, Ch. 405, L. 1973; amd. Sec. 2, Ch. 210, L. 1975; R.C.M. 1947, 84-902.

15-23-303. Assessment of property — apportionment to counties. The department must assess all the properties described in 15-23-301, but franchises granted by the United States must not be assessed. The value of such properties for assessment purposes shall be determined upon such factors as the department considers proper.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R.C.M. 1921; re-en. Sec. 2143, R.C.M. 1935; amd. Sec. 4, Ch. 17, L. 1939; amd. Sec. 27, Ch. 516, L. 1973; amd. Sec. 13, Ch. 98, L. 1977; R.C.M. 1947, 84-905.

Part 4

Airlines

15-23-401. Definitions. The following words and phrases when used in this part, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(2) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(3) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(4) "Flight property" means aircraft fully equipped, ready for flight used in air commerce.

(5) "Operating" or "operated" means landings or takeoffs during interstate flight.

(6) "Scheduled airline company" means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce.

History: En. Sec. 1, Ch. 249, L. 1955; amd. Sec. 1, Ch. 367, L. 1969; amd. Sec. 22, Ch. 52, L. 1977; R.C.M. 1947, 84-6401.

15-23-402. Report by airline company. Every airline company engaged in air commerce in this state shall annually file with the department of revenue in such form as the department may require a report under oath showing the following:

(1) the name of the person or persons, association, joint-stock company, or corporation;

(2) under the laws of what state organized or existing;

(3) the location of its principal office;

(4) the location of its principal office in this state, if any;

(5) the number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

(6) the number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and long-term debt and the market value at the end of the preceding calendar year;

(7) income account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) the total tonnage of passengers, express, and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express, and freight finally discharged by it within this state during the preceding calendar year and the total of such tonnage first received by the airline company or finally discharged by it within and without this state during the preceding calendar year;

(9) the total time in equated plane hours of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) the number of revenue ton-miles of passengers, mail, express, and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) the number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) such other information as the department may require.

History: En. Sec. 3, Ch. 249, L. 1955; amd. Sec. 243, Ch. 516, L. 1973; amd. Sec. 21, Ch. 98, L. 1977; R.C.M. 1947, 84-6403.

Cross-References

Due date of report, 15-23-103.

15-23-403. Determination of value — notice. (1) The department of revenue shall determine the full and true valuation of all property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(a) determining the full and true valuation of all property owned and operated by every scheduled airline company; and

(b) allocating to the state of Montana from this total valuation a valuation which represents this state's proper share of the valuation of the property, through the application of ratios which are indicated in subsections (8), (9), (10), and (11) of 15-23-402 against the total valuation.

(2) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 4, Ch. 249, L. 1955; amd. Sec. 2, Ch. 367, L. 1969; amd. Sec. 244, Ch. 516, L. 1973; amd. Sec. 2, Ch. 328, L. 1975; R.C.M. 1947, 84-6404; amd. Sec. 7, Ch. 686, L. 1979.

Cross-References

Department to apportion value among counties, 15-23-105.

Value to be transmitted to counties, 15-23-106.

Part 5

Mines Net Proceeds

Part Cross-References

Classification and taxable percentage of mines net proceeds, 15-6-131.

Mining license taxes, Title 15, ch. 37.

15-23-501. Taxation of mines. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed as all other land is taxed. All machinery used in mining and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims and the annual net proceeds of all mines and mining claims shall be taxed as other personal property.

History: En. Sec. 3, p. 73, L. 1891; re-en. Sec. 3672, Pol. C. 1895; re-en. Sec. 2500, Rev. C. 1907; re-en. Sec. 2088, R.C.M. 1921; re-en. Sec. 2088, R.C.M. 1935; R.C.M. 1947, 84-5401; amd. Sec. 18, Ch. 693, L. 1979.

Cross-References

Mines as real estate, 15-1-101.

15-23-502. Net proceeds tax — statement of yield. Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Such statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, commercially valuable constituents

of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts; and

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R.C.M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; re-en. Sec. 2089, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969; amd. Sec. 195, Ch. 516, L. 1973; amd. Sec. 16, Ch. 525, L. 1975; amd. Sec. 18, Ch. 52, L. 1977; amd. Sec. 14, Ch. 98, L. 1977; amd. Sec. 4, Ch. 498, L. 1977; R.C.M. 1947, 84-5402; amd. Sec. 1, Ch. 528, L. 1983.

Compiler's Comments

1983 Amendment: In (3), after "ore" deleted "barrels of petroleum, cubic feet of natural gas"; in (4) after "that is," deleted "barrels of petroleum of other crude or mineral oil, cubic feet of natural gas, or other"; in (12) after "workers' compensation insurance" inserted "boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process"; and inserted (13) and (14).

Cross-References

Due date of report, 15-23-103.

15-23-503. Net proceeds — how computed. (1) The department of revenue shall calculate from the returns the gross product yielded from such mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Net proceeds shall be determined by subtracting from the value of the gross product thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the person so engaged in mining;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as hereinafter provided;

(d) all moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of such milling and reduction works for the calendar year for which such return is made;

(f) all moneys actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals therefrom and for marketing the product and the conversion of the same into money;

(g) all moneys expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all moneys expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, and for engineering and geological services conducted in Montana for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of such cost each year for a period of 10 years.

(3) No moneys invested in mines or improvements may be allowed as a deduction unless all machinery, equipment, and buildings represented by such moneys are returned to the county in which such mine is located for assessment purposes at the level of assessment of all other property in such county.

(4) No moneys invested in the mines and improvements during any year except the year for which such statement is made and except as provided in this section may be included in such expenditures, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: **En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R.C.M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; re-en. Sec. 2090, R.C.M. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959; amd. Sec. 109, Ch. 405, L. 1973; amd. Sec. 15, Ch. 98, L. 1977; R.C.M. 1947, 84-5403; amd. Sec. 2, Ch. 528, L. 1983.**

Compiler's Comments

1983 Amendment: In (1)(g), substituted present language for former text, which read: "all moneys expended for fire insurance and workers' compensation insurance and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees."; and inserted (1)(h).

Cross-References

Classification and tax rate for net proceeds of mines, 15-6-131.

Assessment, 15-8-111.

Transmission of value to counties, 15-23-106.

15-23-504. Lien of tax and penalty. The tax and penalty so assessed on net proceeds are a lien upon all of the right, title, and interest of such operator in or to such mine or mining claim and upon all of the right, title, and interest in or to the machinery, buildings, tools, and equipment used in operating the mine or mining claim. The tax and penalty on such net proceeds may be collected and the payment enforced by the seizure and sale of the personal property upon which the tax and penalty are a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. Resort to any one of the methods of enforcing collection shall not bar the right to resort to either or both of the other methods, but any two or all of the methods may be used until the full amount of such tax and penalty is collected.

History: En. Sec. 4, Ch. 161, L. 1933; re-en. Sec. 2090.2, R.C.M. 1935; amd. Sec. 2, Ch. 138, L. 1969; amd. Sec. 16, Ch. 98, L. 1977; R.C.M. 1947, 84-5405.

Cross-References

Sale of personal property for delinquent taxes, 15-16-113.

Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.

Sale of real property for delinquent taxes, Title 15, ch. 17.

Lien of mines net proceeds tax, 15-23-504.

15-23-505. Assessment of royalties. Upon receipt of the list or schedule setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to the royalty owners or claimants during the year for which the return is made, the department of revenue shall proceed to assess and tax the royalties on the same basis as net proceeds of mines are taxed as provided by 15-6-131.

History: En. Sec. 3, Ch. 188, L. 1935; re-en. Sec. 2090.3, R.C.M. 1935; amd. Sec. 196, Ch. 516, L. 1973; amd. Sec. 64, Ch. 566, L. 1977; R.C.M. 1947, 84-5406; amd. Sec. 19, Ch. 693, L. 1979.

Cross-References

Transmission of value to counties, 15-23-106.

15-23-506. False or fraudulent reports. If any report required by this part contains any willfully false or fraudulent statements as to the gross amount received by any person engaged in mining for any mine's product, then the department shall compute the gross value of such mine's product based upon the average quotations of the price of such mine's product in New York City or the relative market value at the point of delivery as evidenced by some established authority or market report. If any such person has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of the mine's product so sold or disposed of substantially below the market price, which gross value shall be based upon the quotations of the price of such mine's product in New York City or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935; re-en. Sec. 2090.4, R.C.M. 1935; amd. Sec. 197, Ch. 516, L. 1973; amd. Sec. 17, Ch. 98, L. 1977; R.C.M. 1947, 84-5407.

Cross-References

Failure to file report, 15-23-104.

15-23-507. Taxation and payment on royalty interests. At the time of transmitting net proceeds assessments, the department of revenue shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located. Thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before September 15 following, as specified in this section. Said taxes shall be due and payable. Assessments of royalty on production of metals and minerals other than petroleum and natural gas shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner and to collect the taxes thereon in the same manner as taxes on net proceeds of mines. Taxes on such royalty assessments and taxes on net proceeds of mines shall be payable at the times specified in 15-16-102, and any delinquencies in the payment of same shall be subject to the interest and penalties provided in 15-16-102.

History: En. Sec. 6, Ch. 188, L. 1935; re-en. Sec. 2091.1, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973; amd. Sec. 1, Ch. 398, L. 1975; R.C.M. 1947, 84-5409.

15-23-508. Lien of tax — enforcement of payment. (1) The taxes on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits, provided such personal or real property is owned by or under lease by the person who extracted said ore, mineral products, or deposits.

(2) The tax on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax is a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods of enforcing collection as herein provided for shall not bar the right to resort to either or both of the other methods, but any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 7, Ch. 237, L. 1921; re-en. Sec. 2095, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1925; re-en. Sec. 2095, R.C.M. 1935; amd. Sec. 20, Ch. 52, L. 1977; R.C.M. 1947, 84-5413.

Cross-References

Sale of personal property for delinquent taxes, 15-16-113.

Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.

Sale of real property for delinquent taxes, Title 15, ch. 17.

Lien of mines net proceeds tax, 15-23-504.

15-23-509. Repealed. Sec. 35, Ch. 581, L. 1979.

History: En. Sec. 5, Ch. 237, L. 1921; re-en. Sec. 2093, R.C.M. 1921; re-en. Sec. 2093, R.C.M. 1935; R.C.M. 1947, 84-5411.

15-23-510 through 15-23-520 reserved.

15-23-521. Examination of records by department. The department of revenue shall have the right and power at any time to examine the records of any person specified in this part as the same may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by such person, and if, from such examination or from other information, said department finds any statement or any material part thereof willfully false or fraudulent, said department must assess in the same manner as provided for in 15-23-503.

History: En. Sec. 6, Ch. 237, L. 1921; re-en. Sec. 2094, R.C.M. 1921; re-en. Sec. 2094, R.C.M. 1935; amd. Sec. 201, Ch. 516, L. 1973; R.C.M. 1947, 84-5412.

15-23-522. Surface ground and improvements not exempt. Nothing in this part must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim or used in connection therewith or supplies used either in mills, reduction works, or mines.

History: En. Sec. 8, Ch. 237, L. 1921; re-en. Sec. 2096, R.C.M. 1921; re-en. Sec. 2096, R.C.M. 1935; R.C.M. 1947, 84-5414.

15-23-523. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports, and returns required by law to be made with reference to the net proceeds of mines and pay the tax due for such period as it transacted business on or before the date of such dissolution or cessation of business. The department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941; amd. Sec. 202, Ch. 516, L. 1973; R.C.M. 1947, 84-5415.

Part 6

Oil and Gas Net Proceeds

Part Cross-References

Oil and gas severance tax, Title 15, ch. 36.

Privilege and license tax on oil and gas producers, 82-11-131.

15-23-601. Definitions. As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(2) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(3) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer.

History: En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 21, Ch. 52, L. 1977; amd. Sec. 18, Ch. 98, L. 1977; R.C.M. 1947, 84-6201; amd. Sec. 1, Ch. 525, L. 1981.

Compiler's Comments

1981 Amendment: Inserted the lead-in phrase and subsection (1) defining "Excise tax".

15-23-602. Statement of sales proceeds. Each operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before

April 15 in each year make out and deliver to the department of revenue a statement of the gross sales proceeds of such natural gas, petroleum, or other crude or mineral oil from each well owned or worked by such person during the next preceding calendar year. The gross sales proceeds shall be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(1) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the well;

(3) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement;

(4) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold;

(5) actual cost of extracting product from well;

(6) cost of construction, repairs, and betterments;

(7) actual cost of fire insurance and workers' compensation insurance;

(8) the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil reported pursuant to subsection (3), including a separate statement of the amount of such taxes paid or withheld from each royalty owner.

History: En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973; amd. Sec. 19, Ch. 98, L. 1977; R.C.M. 1947, 84-6202; amd. Sec. 1, Ch. 425, L. 1981; amd. Sec. 2, Ch. 525, L. 1981; amd. Sec. 3, Ch. 606, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, after "on or before" changed "March 31" to "April 15"; amendment applicable to reports or returns filed after December 31, 1982.

1981 Amendments: Chapter 425 substituted "sales proceeds" for "yield" in the middle of the first sentence; substituted the second sentence for "and the value thereof" that was at the end of the first sentence; substituted "sold" for "extracted or produced" in (3); substituted language in (4) for "the gross yield or value in dollars and cents".

Chapter 525 added subsection (8).

Cross-References

Due date of return, 15-23-103.

15-23-603. Net proceeds — how computed. (1) The department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross sales proceeds thereof the following:

(a) all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operation and development;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

(e) 70% of the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner.

(2) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof.

History: En. Sec. 3, Ch. 135, L. 1955; amd. Sec. 230, Ch. 516, L. 1973; amd. Sec. 20, Ch. 98, L. 1977; R.C.M. 1947, 84-6203; amd. Sec. 2, Ch. 425, L. 1981; amd. Sec. 3, Ch. 525, L. 1981; amd. Sec. 3, Ch. 383, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (1)(e), inserted "70% of"; deleted former (2), which read: "The value arrived at under subsection (1) shall be increased by the amount of any refund received from the U.S. government to the extent that the amount refunded was used to reduce the value of the gross products under subsection (1)(e)."

Section 5, Ch. 383, L. 1983, provided that the amendment applies retroactively to production years beginning on or after January 1, 1980.

1981 Amendments: Chapter 425 substituted "gross sales proceeds" for "gross value" in the net proceeds formula in two places in (1); deleted "or apportioned" before "in cash" and "or in kind" after "in cash" near the beginning of (1)(a); added all language after "in cash by the operator or producer" in (1)(a).

Chapter 525 inserted subsections (1)(e) and (2) (now deleted).

Cross-References

Transmission of value to counties, 15-23-106.

15-23-604. Deduction of drilling costs and capital expenditures. The department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow 10% of such cost each year for a period of 10 years beginning after the 3-year exemption period allowed in 15-36-121 for qualified wells; provided, however, the operator or producer may elect to amortize the cost over a period of 2 years if the well is less than 3,000 feet deep.

History: En. Sec. 4, Ch. 135, L. 1955; amd. Sec. 231, Ch. 516, L. 1973; amd. Sec. 5, Ch. 256, L. 1977; R.C.M. 1947, 84-6204(part).

15-23-605. Assessment of royalties. The amount of royalty received, valued as provided in 15-23-603(1)(a), less 70% of the amount of excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602(8), shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

History: En. Sec. 5, Ch. 135, L. 1955; amd. Sec. 232, Ch. 516, L. 1973; amd. Sec. 68, Ch. 566, L. 1977; R.C.M. 1947, 84-6205; amd. Sec. 3, Ch. 425, L. 1981; amd. Sec. 4, Ch. 525, L. 1981; amd. Sec. 4, Ch. 383, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of section, after "less" inserted "70% of"; deleted former (2), which read: "The net proceeds to a recipient shall be increased by any refund of an excise tax to the extent that the amount refunded was used to reduce the value of the royalty received under subsection (1)."

Section 5, Ch. 383, L. 1983, provided that the amendment applies retroactively to production years beginning on or after January 1, 1980.

1981 Amendments: Chapter 425 inserted "valued as provided in 15-23-603(1)(a)" after "The amount of royalty received" near the beginning of the section.

Chapter 525 inserted ", less the amount of excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602(8)," after "royalty received" at the beginning of (1); added subsection (2) (now deleted).

Cross-References

Transmission of value to county, 15-23-106.

15-23-606. False or fraudulent reports — procedure in case of. If any report required by this part contains any willfully false or fraudulent statement as to the gross amount received by any person engaged in mining as aforesaid for any mine's product, then the department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product in such manner as may seem to be equitable.

History: En. Sec. 6, Ch. 135, L. 1955; amd. Sec. 233, Ch. 516, L. 1973; R.C.M. 1947, 84-6206.

15-23-607. County assessors to compute taxes. (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds, except as provided in 15-36-121, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

(2) The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest. After such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963; amd. Sec. 235, Ch. 516, L. 1973; amd. Sec. 6, Ch. 256, L. 1977; R.C.M. 1947, 84-6208.

15-23-608. Lien of tax and penalty — enforcement of payment. (1) The taxes and/or penalties on such net proceeds must be levied as the levy of other taxes is provided for. Every such tax and/or penalty is a lien upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

(2) The tax and/or penalty on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax and/or penalty is a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements as provided for the sale of real property for delinquent taxes or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: **En. Sec. 13, Ch. 135, L. 1955; amd. Sec. 2, Ch. 159, L. 1969; R.C.M. 1947, 84-6213.**

Cross-References

Sale of personal property for delinquent taxes, 15-16-113.

Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.

Sale of real property for delinquent taxes, 15-23-504.

15-23-609. Statement required on dissolution of corporation during taxpaying year. Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports, and returns required by this part and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: **En. Sec. 11, Ch. 135, L. 1955; amd. Sec. 237, Ch. 516, L. 1973; R.C.M. 1947, 84-6211.**

15-23-610. Examination of records by department. The department of revenue shall have the right and power at any time to examine all books, records, papers, and documents of such person pertaining to such business in order to verify the statements made by such person, and if, from such examination or from other information, said department finds any statement or any material part thereof willfully false or fraudulent, said department must assess in the same manner as provided for in 15-23-603.

History: **En. Sec. 12, Ch. 135, L. 1955; amd. Sec. 238, Ch. 516, L. 1973; R.C.M. 1947, 84-6212.**

15-23-611. Surface ground and improvements not exempt. Nothing in this part must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or supplies used in connection therewith.

History: **En. Sec. 14, Ch. 135, L. 1955; R.C.M. 1947, 84-6214.**

15-23-612. Certain natural gas exempt. (1) Natural gas produced as provided in 15-36-121(2) is exempt from one-half the net proceeds tax imposed by this part for 3 years beginning as provided in 15-36-121(3) if the requirements of 15-36-121(2) are met.

(2) Notwithstanding the provisions of subsection (1), all reporting requirements under the net proceeds tax remain in effect.

History: **En. 84-2213 by Sec. 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2213(part).**

15-23-613 and 15-23-614 reserved.

15-23-615. Adjustment of certain deductions — when. (1) The department of revenue may adjust the percentage provided in 15-23-603 and 15-23-605 to reflect the actual excise taxes imposed by the United States government on production, sale, or removal of natural gas, petroleum, or other crude or mineral oil whenever:

(a) requested to do so by the taxpayer; or

(b) the department determines that the percentage does not accurately reflect the actual excise taxes paid by the operator.

(2) When the taxpayer requests under subsection (1) that the department adjust the percentage deduction allowed, the taxpayer must provide the data reasonably necessary for the department to make a determination under subsection (1).

(3) Any adjustment made under subsection (1) must be reflected in the net proceeds and royalty values certified to the county in the taxable year following the year of the final determination under subsection (1).

History: **En. Sec. 1, Ch. 383, L. 1983.**

Compiler's Comments

Retroactivity: Section 5, Ch. 383, L. 1983, provided: "Applicability date. This act applies retroactively within the meaning of 1-2-109 to production years beginning on or after January 1, 1980."

15-23-616. Future returns to reflect reduced deduction. (1) Except as provided in subsection (2), each taxpayer who files a return for 1983 production must reflect the reduced excise tax deduction pursuant to 15-23-603 and 15-23-605 for the period between January 1, 1980, and October 1, 1983, on the net proceeds statement required under 15-23-602 in the first taxable year after October 1, 1983.

(2) Either the taxpayer or the department may adjust the deduction under this section to reflect the actual excise taxes paid by the operator.

History: **En. Sec. 2, Ch. 383, L. 1983.**

Compiler's Comments

Retroactivity: Section 5, Ch. 383, L. 1983, provided: "Applicability date. This act applies retroactively within the meaning of 1-2-109 to production years beginning on or after January 1, 1980."

Part 7

Coal Gross Proceeds

Part Cross-References

Classification and taxable percentage of coal gross proceeds, 15-6-132.

Coal severance tax, Title 15, ch. 35.

Coal retailer's license tax, Title 15, ch. 58.

15-23-701. Reporting gross yield from coal. (1) Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department, which may be coordinated with the form used under 15-35-104 and must be verified by an officer of the firm. The statement shall include:

(a) the name and address of the owner or lessee or operator of the mine;

(b) the location of the mine;

(c) the tons of coal extracted, treated, and sold from the mine during the taxable period;

(d) the gross yield or value in dollars and cents derived from the contract sales price as defined in 15-35-102(1).

(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section.

History: En. 84-1320 by Sec. 9, Ch. 525, L. 1975; amd. Sec. 3, Ch. 156, L. 1977; R.C.M. 1947, 84-1320; (2)En. Sec. 2, Ch. 326, L. 1983.

Cross-References

Due date of report, 15-23-103.

Transmission of value to counties, 15-23-106.

15-23-702. Transmission of gross proceeds to county assessor. On or before July 1 each year, the department shall transmit to the county assessor of each county in which coal mines are situated the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department.

History: En. 84-1321 by Sec. 10, Ch. 525, L. 1975; R.C.M. 1947, 84-1321.

15-23-703. Taxation of gross proceeds. The county assessor shall prepare from the reported gross proceeds from coal a tax roll which he shall transmit to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each coal producer and to collect the taxes due within 60 days after mailing.

History: En. 84-1322 by Sec. 11, Ch. 525, L. 1975; R.C.M. 1947, 84-1322.

15-23-704. Lien of tax — enforcement of payment. The tax on gross proceeds from coal shall be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under 15-16-113 and chapter 17, part 9, or by suit under 15-16-501 and 15-16-502.

History: En. 84-1323 by Sec. 12, Ch. 525, L. 1975; R.C.M. 1947, 84-1323.

Cross-References

Lien for payment of coal severance tax, 15-35-105.

Part 8

Metal Mines Gross Proceeds

Part Cross-References

Classification and taxable percentage for metal mines gross proceeds, 15-6-132.

Mining license taxes, Title 15, ch. 37.

15-23-801. Definitions. As used in this part, the following definitions apply:

(1) "Agreement not at arm's length" means an agreement between parties where the sales price does not represent market value.

(2) "Department" means the department of revenue.

(3) "Gross proceeds" or "gross metal yield" means the revenue realized from the extraction of metals, determined by multiplying the quantity produced by the merchantable value.

(4) "Market value" means the exchange value of a property in a competitive market.

(5) "Merchantable value" means the average market value of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, the merchantable value in the county in which they are extracted shall be the average market value of these metals after this processing.

History: **En. 84-7901 by Sec. 7, Ch. 498, L. 1977; R.C.M. 1947, 84-7901.**

Cross-References

Minerals as real estate, 15-1-101.

15-23-802. Metal mines — ad valorem taxation — reports and sampling. (1) Each person mining or extracting gold, silver, copper, lead, or other metals from any mine or mining property located within this state must, on or before March 31 each year, file with the department of revenue a statement of the gross metal yield from each mine or mining property owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department and shall contain the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore, concentrate, or other mineral products or deposits have been shipped or sold during the period covered by the statement;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value; that is, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of such ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the gross value of product in dollars and cents; and

(g) any other information requested by the department.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore, concentrate, or other mineral products or deposits are shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

History: **En. 84-7902 by Sec. 8, Ch. 498, L. 1977; R.C.M. 1947, 84-7902; amd. Sec. 1, Ch. 288, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "any mine or mining property located within this state" for "whatever source" in the first sentence of (1); inserted "or mining property" after "each mine" in the middle of (1) and after "operator of the mine" in (1)(a); deleted former subsections (3) and (4) that read "(3) the tons of ore extracted from the mine during the taxable period; (4) the merchantable value in dollars and cents of all metals extracted"; added subsections (1)(c) through (1)(f), (2), and (3).

Cross-References

County Assessor as agent of Department, 15-8-102.

15-23-803. Valuation — gross proceeds. On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall transmit to its agent in each county where metals are produced the merchantable value as has been determined by the department for placement on the assessment roll after subtracting such portion of the proceeds as may be exempt from property taxation.

History: En. 84-7903 by Sec. 9, Ch. 498, L. 1977; R.C.M. 1947, 84-7903.

15-23-804. Taxation of merchantable value. The department's agent shall prepare from the reported valuation a tax roll which shall be transmitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each metal producer and to collect the taxes due at the times provided for in 15-16-102, and any delinquencies in the payment of same shall be subject to the interest and penalties provided for in 15-16-102.

History: En. 84-7904 by Sec. 10, Ch. 498, L. 1977; R.C.M. 1947, 84-7904.

15-23-805. Imputed value — procedure for metals. If there is no sale or the sale is by an agreement not at arm's length or no statement is filed, the department shall impute the merchantable value of the metal. When imputing value, the department shall consider all appropriate market information available. When the imputed value is contested in any proceedings, the burden of proof is with the contesting party.

History: En. 84-7905 by Sec. 11, Ch. 498, L. 1977; R.C.M. 1947, 84-7905.

15-23-806. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is a prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided in chapters 16, 17, and 18 of this title.

History: En. 84-7906 by Sec. 12, Ch. 498, L. 1977; R.C.M. 1947, 84-7906; amd. Sec. 12, Ch. 581, L. 1979.

15-23-807. Assessment procedures. The gross proceeds of metal mines shall be assessed under the provisions of 15-23-101 through 15-23-107.

History: En. 84-7907 by Sec. 13, Ch. 498, L. 1977; R.C.M. 1947, 84-7907; amd. Sec. 13, Ch. 581, L. 1979.

CHAPTER 24

SPECIAL PROPERTY TAX APPLICATIONS

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Part 1

Motor Vehicle Fleets

15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration. (1) The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana between January 1 and April 1, the taxable vehicles are taxed for a full year. With respect to any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this part or any other law of the state of Montana after April 1, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of three-quarters of a ton or less that are part of an interstate motor vehicle fleet are subject to the light vehicle license fee imposed by 61-3-532. If the fleet is proportionally registered, the fee is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes, fees, or both have been assessed and paid shall not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, or fees, or both for the current registration year. The payment of personal property taxes, fees, or both, is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965; amd. Sec. 16, Ch. 516, L. 1973; R.C.M. 1947, 84-727; amd. Sec. 14, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the taxable vehicles in" before "interstate motor vehicle fleets" near the beginning of (1); added "with respect to" at the beginning of (2), at the beginning of the second sentence of (2), and at the beginning of (3); substituted "The taxable vehicles are taxed for a full year." for "shall be taxed for a full year" at the end of the first sentence of (2) and at the end of (3); substituted "the taxes on taxable vehicles are apportioned as provided in 15-24-303" for "shall have taxes apportioned as provided in 15-24-303" at the end of (2); added subsection (4); inserted "fees, or both" after "current taxes" near the beginning of (5); inserted "or charged fees" after "shall not be assessed" in the middle of (5); substituted "payment of taxes, or fees, or both, for the current registration year" for "payment of tax for the current registration year" at the end of the first sentence of (5); and made minor changes in phraseology.

15-24-102. Valuation of interstate fleets — determination of aggregate tax due. The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana as prescribed by 61-3-721 shall be the assessed value.

(3) The sum of the assessed value of all taxable vehicles included in the fleet multiplied by 16% shall be the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the statewide average county mill levy plus state levies as hereinafter provided.

History: En. Sec. 2, Ch. 89, L. 1965; amd. Sec. 17, Ch. 516, L. 1973; amd. Sec. 54, Ch. 566, L. 1977; R.C.M. 1947, 84-728; amd. Sec. 20, Ch. 693, L. 1979; amd. Sec. 15, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the taxable vehicles" after "The department of revenue shall assess" at the beginning of the section; inserted "of the taxable vehicles" after "The purchase price" at the beginning of (1); and inserted "taxable" between "value of all" and "vehicles" in (3).

Cross-References

Classification and taxable percentage of automobiles, 15-6-139.

Classification and taxable percentage of trucks and trailers, 15-6-140.

15-24-103. Determination of average levy in state — application to interstate fleets — cost stated in application for registration. (1) The department of revenue shall determine the aggregate tax in the entire state for state, county, and local purposes levied on the general property of the state in the previous year, excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection, and protection purposes.

(2) From the total taxable valuation of the general property of the state, including net proceeds and the aggregate tax as determined, the department shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of taxable vehicles of an interstate motor vehicle fleet.

(3) The original cost of each taxable vehicle shall be included on the application for proportional registration under the provisions of 61-3-711 through 61-3-733. The department shall determine the original cost when the owner does not have this information on new or used vehicles or in the case of rebuilt vehicles.

History: En. Sec. 3, Ch. 89, L. 1965; amd. Sec. 18, Ch. 516, L. 1973; R.C.M. 1947, 84-729; amd. Sec. 16, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "taxable vehicles of an interstate motor vehicle fleet" for "all interstate trucks" at the end of (2); and inserted "taxable" before "vehicle" near the beginning of (3).

15-24-104. Situs in state of proportionally registered fleets — collection of taxes and fees. (1) For the purposes of this part, any vehicle previously registered or which has had application for registration made under the provisions of 61-3-711 through 61-3-733 is hereby declared to have a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes, or license fees, or both prescribed in this part.

History: **En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973; R.C.M. 1947, 84-730; amd. Sec. 14, Ch. 581, L. 1979; amd. Sec. 17, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "property taxes, or license fees, or both, prescribed in this part" for "property taxes prescribed herein" at the end of (2).

15-24-105. Deposit and distribution of taxes and fees on proportionally registered fleets. The personal property taxes and license fees collected under this part shall be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for personal property taxes, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for light vehicle license fees, according to the ratio of light vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all such fees collected in all the counties.

History: **En. Sec. 5, Ch. 89, L. 1965; R.C.M. 1947, 84-731; amd. Sec. 18, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "The personal property taxes and licenses fees collected under this part" for "The personal property taxes described herein and collected" at the beginning of the section; added "on the following basis:" after "general fund of each county" before (1); added "for personal property taxes" at the beginning of (1); and added subsection (2).

Part 2

Mobile Homes

Part Cross-References

Classification and taxable percentage for mobile homes and housetrailers, 15-6-134.

15-24-201. Definitions. As used in this part, the following definitions apply:

(1) "Dealer" means a person engaged in the distribution or sale of mobile homes.

(2) "Housetrailer" means a form of housing designed to be moved from one place to another by an independent power connected thereto, which is either 8 feet wide or less or 32 feet long or less.

(3) "Mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected thereto.

History: **En. Sec. 1, Ch. 275, L. 1965; amd. Sec. 4, Ch. 296, L. 1967; amd. Sec. 2, Ch. 450, L. 1975; R.C.M. 1947, 84-6601.**

Cross-References

Definition of "mobile home", 15-1-101.

Enforcement by Department of Highways personnel, 61-12-206.

15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker. (1) The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206(2). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed.

(2) Tax due on a mobile home or housetrailer not taxed as an improvement that is not paid on or before September 30 of the year that the property is assessed is delinquent and is subject to the same interest and penalty as delinquent property taxes under 15-16-102. Interest begins to accrue as of September 30 of the year the property is assessed.

(3) The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailers if the taxes and any interest and penalty owed are paid in full. An owner shall then display the sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer.

History: **En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(5)(a); amd. Sec. 15, Ch. 581, L. 1979; amd. Sec. 1, Ch. 159, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (2); inserted "and any interest and penalty owed" after "if the taxes" in the second sentence of (3).

Cross-References

Migratory personal property, 15-24-302.

Enforcement by Department of Highways personnel, 61-12-206.

15-24-203. Tax receipt — when production required. If stopped on a highway or at a state vehicle weight station by a state highway patrolman or state vehicle weight station attendant, a person transporting a mobile home or housetrailer must produce, if requested, the property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed.

History: **En. Sec. 3, Ch. 275, L. 1965; R.C.M. 1947, 84-6603; amd. Sec. 16, Ch. 581, L. 1979.**

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty. (1) Whoever makes a false or fraudulent declaration of destination or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax-paid receipt, if a tax-paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than 6 months or by a fine of not more than $500, or both.

(2) Whoever fails to display a property-tax-paid sticker or to produce a property-tax-paid receipt from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year, when the display of a tax-paid receipt is required, commits a misdemeanor punishable by a fine of not less than $10 or more than $50 or confinement in the county jail for not more than 30 days or both such fine and

imprisonment. The sticker and receipt are not required for mobile homes which are classified as improvements to land.

History: En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967; amd. Sec. 3, Ch. 450, L. 1975; R.C.M. 1947, 84-6604.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-24-205. Sections limited to taxable trailers. The provisions of this part shall apply only to those mobile homes and housetrailers, as defined in this part, subject to assessment and taxation under chapter 8, part 2, and 15-24-301.

History: En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967; R.C.M. 1947, 84-6605.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-24-206. Declaration of destination on imported mobile homes — display — tax receipt — exemptions. (1) Whoever brings a mobile home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home and such other information as the department of revenue may require and shall deliver the original of the declaration to whomever is on duty at the nearest port of entry station, state vehicle weight station, or such other place and person as the department may prescribe. He shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home at a conspicuous place.

(2) The treasurer shall issue the mobile home movement declaration provided for in this section to a person required by this section to execute it, in such quantities as he requests to a maximum of 100. The treasurer shall issue such additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. In any event executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) Whoever moves a mobile home from a point within the state to another point within or without the state shall first:

(a) execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the department may prescribe, and affix a copy of it in a conspicuous place on the mobile home to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes with respect to that mobile home.

(4) The provisions of subsection (3)(b) do not apply whenever a person moves a mobile home:

(a) from a point without to a point within the state;

(b) between places of business of dealers within or without the state;

(c) from the place of business of a dealer to a point within or without the state.

History: (1), (3), (4)En. Sec. 5, Ch. 296, L. 1967; amd. Sec. 250, Ch. 516, L. 1973; Sec. 84-6606, R.C.M. 1947; (2)En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M.

1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; Sec. 84-4202, R.C.M. 1947; R.C.M. 1947, 84-4202(5)(b), 84-6606; amd. Sec. 17, Ch. 581, L. 1979.

15-24-207. Department to make rules. The department of revenue may make reasonable rules necessary for or as an aid to effectuation of the purposes of this part.

History: En. Sec. 6, Ch. 296, L. 1967; amd. Sec. 251, Ch. 516, L. 1973; R.C.M. 1947, 84-6607.

15-24-208. Penalty for moving mobile home on which taxes due. Any person that moves a mobile home on which property taxes are unpaid is guilty of a misdemeanor.

History: En. 84-6608 by Sec. 1, Ch. 250, L. 1977; R.C.M. 1947, 84-6608.

Cross-References

Misdemeanor penalty, 46-18-212.

Part 3

Migratory Personal Property

15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (6), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Any motor vehicle not subject to the light vehicle license fee brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for the calendar year in which the fee is collected. The machines shall be subject to taxation under class eight only if they are sold in Montana.

(6) The provisions of this part do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less. These vehicles are subject to the fee provided for in 61-3-532.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967; amd. Sec. 1, Ch. 370, L. 1974; amd. Sec. 65, Ch. 566, L. 1977; R.C.M. 1947, 84-6008; amd. Sec. 1, Ch. 603, L. 1979; amd. Sec. 21, Ch. 693, L. 1979; amd. Sec. 6, Ch. 598, L. 1981; amd. Sec. 4, Ch. 613, L. 1981; amd. Sec. 19, Ch. 614, L. 1981; amd. Sec. 1, Ch. 48, L. 1983.

Compiler's Comments

1983 Amendment: In (5), substituted "the calendar year in which the fee is collected" for "a 60-day period".

1981 Amendments: Chapter 598 substituted (4) for "This section does not apply to any motor vehicle brought, driven, or coming into this state by any nonresident person temporarily employed in Montana for a period not exceeding 90 days if the motor vehicle is used exclusively for transportation of such person.

Chapter 613 deleted "in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date" from the end of (3) in the version to be effective January 1, 1983.

Chapter 614 added "Except as provided in subsection (2) through (6)" at the beginning of (1); and added subsection (6) which is effective January 1, 1982.

Coordination: Section 15-24-301 appeared in HB 389 (Ch. 598, L. 1981) twice. It appeared in section 1 and 6. Section 6, Ch. 598, L. 1981, was a coordination section; it provided, in part: "If Senate Bill 355 [Ch. 614, L. 1981], providing a license fee system for light vehicles, is passed and approved then section 1 of this act is void and section 15-24-301, MCA, is amended to read:..." Because SB 355 was passed and approved the 1981 amendments of Ch. 598, L. 1981 to 15-24-301 are those contained in sec. 6, Ch. 598, L. 1981.

Cross-References

Applicability to mobile homes and housetrailers, 15-24-205.

Custom combiner's tax in lieu of taxes required under this section, 15-24-1001.

Registration of foreign motor vehicles, Title 61, ch. 3, part 7.

Transportation of vehicles through the state, Title 61, ch. 4, part 3.

Liability for per capita assessment fee on sheep, 81-7-303.

15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202; as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited above; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.

History: En. Sec. 3, Ch. 41, L. 1953; amd. Sec. 7, Ch. 260, L. 1977; R.C.M. 1947, 84-6010; amd. Sec. 18, Ch. 581, L. 1979; amd. Sec. 9, Ch. 663, L. 1979; amd. Sec. 2, Ch. 159, L. 1981; amd. Sec. 2, Ch. 598, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 159 substituted "15-24-202" for "15-24-202(1)".

Chapter 598 added subsection (1).

15-24-303. Proration of tax on personal property. If such personal property is brought or driven or comes into any county before the assessment date, the tax shall be the full amount of the tax computed as provided above, but if brought, driven, or coming into the county after the assessment date, the tax shall be prorated according to the ratio which the number of months the property has its taxable situs in the county bears to the total number of months in said year.

History: **En. Sec. 4, Ch. 41, L. 1953; amd. Sec. 8, Ch. 260, L. 1977; R.C.M. 1947, 84-6011.**

Cross-References

Proration of taxes on motor vehicle fleets, 15-24-101.

15-24-304. Prorated taxes — aircraft. A person who acquires an aircraft required to be registered under subsections (2) through (7) of 67-3-201 after March 1 in any year shall register the aircraft within 30 days of acquiring it. The county assessor shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided in 15-24-303.

History: **En. 84-4218 by Sec. 3, Ch. 542, L. 1975; amd. Sec. 3, Ch. 210, L. 1977; R.C.M. 1947, 84-4218; amd. Sec. 1, Ch. 220, L. 1981; amd. Sec. 4, Ch. 157, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "(7)" for "(6)"; and changed registration date from June 1 to March 1.

1981 Amendment: Substituted "June 1" for "March 1".

Part 4

Business Inventories

Part Cross-References

Classification and taxable percentage of business inventories, 15-6-136.

Taxation of business inventory in a free-trade zone, 30-15-104.

15-24-401. Repealed. Sec. 35, Ch. 581, L. 1979.

History: **En. 84-422.1 by Sec. 1, Ch. 182, L. 1977; R.C.M. 1947, 84-422.1.**

15-24-402. Repealed. Sec. 6, Ch. 613, L. 1981.

History: **En. 84-422.2 by Sec. 1, Ch. 255, L. 1977; R.C.M. 1947, 84-422.2.**

15-24-403. Repealed. Sec. 6, Ch. 613, L. 1981.

History: **En. 84-422.3 by Sec. 2, Ch. 255, L. 1977; R.C.M. 1947, 84-422.3.**

Part 5

Banks

(Repealed. Sec. 17, Ch. 634, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-501. (1), (2)En. Sec. 6, Ch. 64, L. 1929; re-en. Sec. 2000.6, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1957; amd. Sec. 1, Ch. 516, L. 1973; amd. Sec. 3, Ch. 341, L. 1975; Sec. 84-308, R.C.M. 1947; (3)En. Sec. 2, Ch. 64, L. 1929; re-en. Sec. 2000.2, R.C.M. 1935; (4)En. Sec. 3, Ch. 64, L. 1929; re-en. Sec. 2000.3, R.C.M. 1935; Sec. 84-305, R.C.M. 1947; R.C.M. 1947, 84-304, 84-305, 84-308.

15-24-502. En. Sec. 1, Ch. 81, L. 1921; re-en. Sec. 2064, R.C.M. 1921; re-en. Sec. 2064, R.C.M. 1935; R.C.M. 1947, 84-4602.

15-24-503. En. Sec. 2, Ch. 81, L. 1921; re-en. Sec. 2065, R.C.M. 1921; re-en. Sec. 2065, R.C.M. 1935; R.C.M. 1947, 84-4603.

15-24-504. En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R.C.M. 1921; re-en. Sec. 2066, R.C.M. 1935; amd. Sec. 86, Ch. 405, L. 1973; amd. Sec. 16, Ch. 388, L. 1975; R.C.M. 1947, 84-4604.

15-24-505. En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R.C.M. 1921; amd. Sec. 1, Ch.

64, L. 1927; re-en. Sec. 2067, R.C.M. 1935; amd. Sec. 87, Ch. 405, L. 1973; amd. Sec. 17, Ch. 388, L. 1975; amd. Sec. 55, Ch. 566, L. 1977; R.C.M. 1947, 84-4605.

15-24-506. En. Sec. 1, Ch. 72, L. 1967; amd. Sec. 88, Ch. 405, L. 1973; amd. Sec. 18, Ch. 388, L. 1975; R.C.M. 1947, 84-4606.

15-24-507. En. Sec. 9, p. 76, L. 1891; re-en. Sec. 3694, Pol. C. 1895; re-en. Sec. 2506, Rev. C. 1907; re-en. Sec. 2063, R.C.M. 1921; re-en. Sec. 2063, R.C.M. 1935; R.C.M. 1947, 84-4601.

15-24-508. En. Sec. 5, Ch. 64, L. 1929; re-en. Sec. 2000.5, R.C.M. 1935; amd. Sec. 2, Ch. 25, L. 1971; amd. Sec. 1, Ch. 501, L. 1977; R.C.M. 1947, 84-307.

Part 6

Insurance Companies

15-24-601. Assessment and taxation of insurance companies. Every insurance company organized under the laws of the state shall be assessed and taxed upon its real estate and personal property at the same rate and in the same manner as other property is assessed and taxed in this state.

History: En. Sec. 1, Ch. 64, L. 1915; re-en. Sec. 2111, R.C.M. 1921; re-en. Sec. 2111, R.C.M. 1935; R.C.M. 1947, 84-5101.

15-24-602. Determining insurance company taxable property. In computing the taxable property of insurance companies organized under the laws of this state, there shall be deducted therefrom:

(1) the value of the real property on which the company pays taxes, such real estate being assessed to the company as other real estate;

(2) the legal reserve required by the laws of this state or by the insurance department thereof for the protection of policyholders;

(3) all assets not admitted as such by the state or by the insurance department thereof; and

(4) such debts and liabilities as may be due or owing by such company.

History: En. Sec. 2, Ch. 64, L. 1915; re-en. Sec. 2112, R.C.M. 1921; re-en. Sec. 2112, R.C.M. 1935; R.C.M. 1947, 84-5102.

15-24-603. Repealed. Sec. 17, Ch. 634, L. 1979.

History: En. Sec. 1, Ch. 63, L. 1929; re-en. Sec. 2112.1, R.C.M. 1935; amd. Sec. 59, Ch. 566, L. 1977; R.C.M. 1947, 84-5103.

Part 7

Production Credit Associations

15-24-701. Production credit associations — assessment and payment. Every production credit association organized under the provisions of section 1131d of Title 12, United States Codes Annotated, shall be assessed for and pay taxes upon all real and personal property owned by such association.

History: En. Sec. 1, Ch. 35, L. 1951; amd. Sec. 113, Ch. 405, L. 1973; amd. Sec. 19, Ch. 388, L. 1975; R.C.M. 1947, 84-5801; amd. Sec. 12, Ch. 634, L. 1979.

Part 8

Building and Loan Associations

15-24-801. Savings and loan associations — taxation. Every savings and loan association subject to regulation under Title 32, chapter 2, shall be assessed for and pay taxes upon all real and personal property owned by the association. The secretary of an association shall furnish to the department of revenue or its agent in the county in which the principal office of the association is located, within 5 days after demand, a condensed statement verified by his oath of the resources and liabilities of the association as disclosed by its books at noon on January 1 in each year. If the secretary fails to make the statement hereby required, the department or its agent shall immediately obtain the information from any other available source, and for this purpose it shall have access to the books of the association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by the association, which assessment shall be as fair and equitable as it may be able to make from the best information available, or the assessor may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section who fails to furnish it is guilty of a misdemeanor.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; re-en. Sec. 6355.21, R.C.M. 1935; amd. Sec. 2, Ch. 391, L. 1973; amd. Sec. 1, Ch. 388, L. 1975; Sec. 7-122, R.C.M. 1947; amd. and redes. 84-7001 by Sec. 76, Ch. 431, L. 1975; R.C.M. 1947, 84-7601; amd. Sec. 13, Ch. 634, L. 1979.

Cross-References

County Assessor as agent of the Department, 15-8-102.

Misdemeanor penalty, 46-18-212.

Part 9

Livestock

Part Cross-References

Exemption for livestock less than 9 months of age and swine less than 3 months of age, 15-6-207.

Levy on cattle — Livestock Protection Committee, 81-6-104.

Levy on cattle — cattle protective districts, 81-6-204, 81-6-209.

State levy on livestock for predator control, 81-7-103, 81-7-104.

County levy on livestock for predator control, 81-7-201.

County levy for sheep predator control, 81-7-303.

County levy for livestock shows and sales, 81-8-504.

15-24-901. Definition. "Livestock" means cattle, sheep, horses, and mules.

History: En. 84-5201.3 by Sec. 1, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.3.

15-24-902. Livestock — where assessed. Livestock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit or until it arrives in the county where the person owning the same resides and must be listed and assessed in such county. If such livestock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county.

History: En. Sec. 3720, Pol. C. 1895; re-en. Sec. 2530, Rev. C. 1907; re-en. Sec. 2068, R.C.M. 1921; re-en. Sec. 2068, R.C.M. 1935; R.C.M. 1947, 84-5201.

Cross-References

Roundup of horses that have escaped assessment, Title 81, ch. 4, part 5.

15-24-903. Duty of owner to assist in assessment. (1) The owner of livestock, as defined in 15-24-901, or his agent, at the time of assessment shall make and deliver to the department of revenue or its agent in the county or counties where his livestock were located since the last assessment date, a written statement, under oath, showing the different kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands, and showing the times during that period that his livestock were within the county or counties.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date.

History: En. 84-5201.1 by Sec. 4, Ch. 507, L. 1975; amd. Sec. 6, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.1; amd. Sec. 2, Ch. 663, L. 1979.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-24-904. Penalty for violation of law. If any person, persons, company, or corporation who is the owner or has in charge any livestock within this state fails to make the statement or statements as provided in 15-24-903, the county assessor may, after 10 days' notice to the person who failed to file the report, increase the assessment by 10% as a penalty.

History: En. Sec. 7, Ch. 125, L. 1909; re-en. Sec. 2075, R.C.M. 1921; re-en. Sec. 2075, R.C.M. 1935; amd. Sec. 5, Ch. 507, L. 1975; R.C.M. 1947, 84-5208; amd. Sec. 3, Ch. 663, L. 1979.

15-24-905. Livestock brought into state — notice to department of revenue or its agent — time for payment. (1) The owner or the agent, manager, or foreman of any person, corporation, or association bringing livestock into this state after January 1 shall immediately after said livestock crosses the state line forward to the department of revenue or its agent in the county into which the livestock is moved a registered or certified letter, which letter shall contain the name of the owner of such livestock, the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided that the department of livestock at least once each month furnish from its own records to the department of revenue or its agent in the county into which such livestock is moved a list of the number and kind of livestock so moved, together with the name of the owner thereof.

(2) The tax due on livestock brought into this state must be paid within 30 days after receiving the tax notice.

(3) Livestock on which tax is owed under this section may not be removed from the county until the taxes have been paid.

History: En. Sec. 5, Ch. 41, L. 1953; amd. Sec. 114, Ch. 405, L. 1973; amd. Sec. 20, Ch. 388, L. 1975; R.C.M. 1947, 84-6012; amd. Sec. 7, Ch. 663, L. 1979.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-24-906. Collection of tax on livestock. The department of revenue or its agent, upon receipt of such letter or other information that livestock has been brought into his county from outside of the state after January 1 in any year, shall immediately proceed under the provisions of this part.

History: En. Sec. 6, Ch. 41, L. 1953; amd. Sec. 115, Ch. 405, L. 1973; amd. Sec. 21, Ch. 388, L. 1975; amd. Sec. 9, Ch. 260, L. 1977; R.C.M. 1947, 84-6013.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-24-907. Repealed. Sec. 15, Ch. 663, L. 1979.

History: En. Sec. 7, Ch. 41, L. 1953; amd. Sec. 116, Ch. 405, L. 1973; amd. Sec. 10, Ch. 260, L. 1977; R.C.M. 1947, 84-6014.

15-24-908. Computation of estimated value of livestock. (1) If the owner's livestock are assessed on the average inventory basis of assessment, the estimated value of livestock in a county on assessment day is computed by adding the assessed value of all livestock more than 9 months of age owned by the taxpayer in the county on the last day of each month since the last assessment day and dividing the sum by 12.

(2) The taxpayer must file a current statement as of the last day of the year setting forth the number of all livestock more than 9 months of age owned by him in each county on the last day of each month during the current tax year.

(3) The taxpayer is entitled to an adjustment of the estimated assessed value of livestock and recomputation of any tax levied and a refund of taxes paid if the amount paid is higher than the estimate.

(4) All remedies available to the taxpayer who owned livestock are available to him notwithstanding the fact that an estimated assessed value of livestock is submitted on or after the tax assessment day, subject to the end-of-the-year adjustment.

History: En. 84-5201.4 by Sec. 2, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.4; amd. Sec. 11, Ch. 663, L. 1979.

Cross-References

Exemption of livestock less than 9 months of age, 15-6-207.

15-24-909. Taxpayer not owning livestock on assessment day. (1) If a taxpayer whose livestock are assessed on the average inventory basis of assessment does not own livestock on assessment day but owned livestock during the preceding tax year, he is not subject to taxes for the current tax year if he files a statement with the appropriate county assessor stating that he does not intend to own or acquire livestock during the tax year.

(2) If the taxpayer does acquire livestock during the year, he must file a current statement on the last day of the year and be subject to the provisions of 15-24-908.

History: En. 84-5201.5 by Sec. 3, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.5; amd. Sec. 12, Ch. 663, L. 1979.

15-24-910. Procedure for correcting assessed value and receiving refunds for overpayments. (1) If the taxpayer owning livestock has filed an estimate pursuant to 15-24-908(1) and a current statement pursuant to 15-24-908(2) which shows that the number of livestock actually owned differs from the estimated number of livestock, the county assessor must within 30 days correct the assessed value of the livestock or provide the taxpayer with a written statement setting forth his reasons for not making the correction.

(2) If there is an increase in the assessed value as a result of the correction, the assessor shall make an additional assessment on the increase and the tax shall be collected as provided in 15-16-113.

(3) If the taxpayer has already paid the tax levied or any portion, the county treasurer must within 30 days make a refund from the livestock reserve fund to the taxpayer of that portion of the tax improperly levied or provide the taxpayer with a written statement setting forth his reasons for not making the refund.

(4) Within 60 days of receipt of the written statement from the county assessor, the taxpayer may commence a lawsuit to correct the assessment or recover the tax paid in a court of competent jurisdiction against the county treasurer, the county or municipality on whose behalf the tax was levied or collected, or the department of revenue, which must be served with summons and a copy of the complaint.

(5) When a tax is paid in installments, the first installment or a portion may be the basis of the lawsuit, and, if any subsequent installment becomes due before the lawsuit is finally determined, the subsequent installment or portion may be paid under protest and incorporated into the pending lawsuit with all rights, duties, and obligations determined by the result of the lawsuit.

(6) Payment and disposition of taxes paid under protest are governed by the provisions of 15-1-402.

History: En. 84-5201.6 by Sec. 4, Ch. 160, L. 1977; R.C.M. 1947, 84-5201.6; amd. Sec. 13, Ch. 663, L. 1979.

15-24-911. Livestock assessment. (1) The department of revenue or its agent must assess all livestock on the average inventory basis as provided in 15-24-908 through 15-24-910 unless:

(a) the owner elects to have his livestock assessed on March 1 of each year as provided in (4); and

(b) the assessor of the county in which the cattle are located on assessment date accepts this election.

(2) The owner shall file his election with the county assessor on the statement required in 15-24-903.

(3) The county assessor shall accept the owner's election unless he determines that the election is made to evade property taxation. The livestock owner may appeal the assessor's decision to the county tax appeal board and the state tax appeal board under the procedures established in Title 15, chapter 15, part 1, and chapter 2, part 3.

(4) If an owner chooses the method of assessment provided in (1)(a), the department of revenue or its agent must assess the owner's livestock in each county as of March 1 of each year. This livestock shall be assessed to the person by whom owned or claimed or in whose possession or control it was at midnight of March 1 in each year.

History: En. Sec. 10, Ch. 663, L. 1979.

Cross-References

Exemption for livestock that are less than 9 months old, 15-6-207.

County Assessor as agent of the Department, 15-8-102.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Payment of taxes on redemption of abandoned horse, 81-4-509.

15-24-912 through 15-24-920 reserved.

15-24-921. Additional tax levy to pay expense of enforcing stock laws. In addition to appropriations made for such purposes, a tax is hereby authorized and directed to be levied on all livestock in this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the stock laws of the state and for the payment of bounties on wild animals as hereinafter specified.

History: En. Sec. 1, Ch. 127, L. 1915; re-en. Sec. 2076, R.C.M. 1921; re-en. Sec. 2076, R.C.M. 1935; R.C.M. 1947, 84-5209.

15-24-922. Department to prescribe levy. The department of revenue is hereby empowered and it is made its duty to annually prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the board of livestock has the right to recommend to said department the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R.C.M. 1921; re-en. Sec. 2077, R.C.M. 1935; amd. Sec. 194, Ch. 516, L. 1973; R.C.M. 1947, 84-5210; amd. Sec. 10, Ch. 79, L. 1983.

Compiler's Comments

1983 Amendment: Changed "various boards herein named" to "board of livestock".

15-24-923. Limitation on levies — livestock moneys. (1) The amount of the levy may not in any event exceed 20 mills upon the taxable value of sheep and 30 mills upon the taxable value of other livestock. The levy is raised to aid in the payment of the general expenses of the brands-enforcement functions of the department of livestock, including salaries, office, detective, prosecution, travel, and all incidental expenses.

(2) A separate levy not to exceed 30 mills on all livestock may be raised for the use of the animal health functions of the department of livestock and placed in the state special revenue fund for the payment of indemnity for animals slaughtered; for salaries and expenses incurred in investigating, controlling, and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes; and for laboratory maintenance. At the written request of the department of livestock, the state treasurer and department of administration shall set aside in a separate account in the state special revenue fund any moneys as may be available and requested. The moneys may be expended only when the department of livestock determines that a livestock disease emergency exists requiring its expenditure for such purposes as the department may order and direct.

(3) A separate levy of not to exceed 10 mills on the taxable value of all livestock may be raised to be used at the discretion of the department of livestock for any or all of the purposes set forth in subsections (1) and (2) of this section or in 81-7-102 and 81-7-103.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1929; re-en. Sec. 2078, R.C.M. 1935; amd. Sec. 109, Ch. 147, L. 1963; amd. Sec. 1, Ch. 422, L. 1975;

amd. Sec. 1, Ch. 120, L. 1977; amd. Sec. 60, Ch. 566, L. 1977; R.C.M. 1947, 84-5211; amd. Sec. 1, Ch. 445, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

1981 Amendment: Increased the maximum mill levy on sheep from 10 mills to 20 mills in subsection (1); increased the maximum mill levy on other livestock from 15 mills to 30 mills in subsection (1); and increased the maximum mill levy on all livestock from 15 mills to 30 mills in subsection (2).

15-24-924. Use of moneys arising from taxes prescribed in preceding section. The money received from the tax levied on sheep as provided in 15-24-923(1) shall be placed to the credit of the state special revenue fund and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expenses of the brands-enforcement functions of the department of livestock, and the moneys received from the tax on all other stock as provided in the preceding section shall be placed to the credit of the state special revenue fund to be used for like purposes by the department. The moneys received from the tax levied by 15-24-923(2) shall be placed in the state special revenue fund to be used for the animal health functions of the department of livestock for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith. The moneys received from the tax levied by 15-24-923(3) shall be placed in the state special revenue fund to be used at the discretion of the department for payment of expenses incurred in the discharge of its animal health, brands-enforcement, or predatory animal control functions.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R.C.M. 1921; re-en. Sec. 2079, R.C.M. 1935; amd. Sec. 89, Ch. 147, L. 1963; amd. Sec. 2, Ch. 422, L. 1975; amd. Sec. 2, Ch. 120, L. 1977; R.C.M. 1947, 84-5212; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

15-24-925. Transmission of taxes from county to state treasurer. The taxes levied and the money collected pursuant to the provisions of 15-24-923 shall be transmitted with other taxes for state purposes to the state treasury by the county treasurer of each county, as provided in 15-1-504. The county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify said separate amounts in his report to the state treasurer. Such money, when received by the state treasurer, shall be placed to the credit of the funds as provided in 15-24-924.

History: En. Sec. 5, Ch. 127, L. 1915; re-en. Sec. 2080, R.C.M. 1921; re-en. Sec. 2080, R.C.M. 1935; R.C.M. 1947, 84-5213; amd. Sec. 1, Ch. 100, L. 1983; amd. Sec. 3, Ch. 444, L. 1983.

Compiler's Comments

1983 Amendments: Chapters 100 and 444 both deleted "annually" following "transmitted" in the first sentence; and added "as provided in 15-1-504" at the end of the first sentence.

15-24-926. Livestock reserve fund. (1) The county treasurer may, at the discretion of the county governing body, deposit up to 5% of the property tax collected each year on livestock assessed on the average inventory basis in a livestock reserve fund.

(2) Refunds for overpayment of property tax on livestock made under the provisions of 15-24-910 shall be issued from this fund.

(3) When the amount in a livestock reserve fund exceeds 10% of the total property tax collected in a year on livestock assessed on the average inventory basis, the excess funds shall be transferred to the county general fund and included in the next year's county budget.

History: En. Sec. 14, Ch. 663, L. 1979.

15-24-927 through 15-24-930 reserved.

15-24-931. Assessment of swine. (1) Each swine producer shall submit a statement in the manner prescribed by the department of revenue showing the number of pigs owned in each of the following classes as of January 1:

(a) market hogs, which are hogs between 3 months and 6 months of age and which have a conclusively presumed weight factor of 150 pounds;

(b) breeding sows, which have a conclusively presumed weight factor of 300 pounds;

(c) breeding boars, which have a conclusively presumed weight factor of 300 pounds.

(2) The department shall determine market value of swine by multiplying the following average USDA Omaha quotation price over the preceding 5 years, less $2 per hundred in the case of market hogs and breeding sows, times the conclusively presumed weight of each pig in the class:

(a) market hogs—USDA Omaha quotation for barrows and gilts, grades 1 to 3, at 230 to 240 pounds;

(b) breeding sows—USDA Omaha quotation for sows, grades 1 to 2, at 300 to 350 pounds;

(c) breeding boars—valued the same as market hogs.

(3) The department shall apply the same equalization factor to swine as to other classes of livestock.

(4) The department shall publish the most recent 5-year average USDA Omaha quotation price for each class in the Administrative Rules of Montana.

History: En. 84-5222 by Sec. 1, Ch. 393, L. 1977; R.C.M. 1947, 84-5222; amd. Sec. 68, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (2)(a), inserted "barrows and gilts" and changed "200" to "230"; in (2)(b), inserted "grades 1 to 2" and changed "270 to 330" to "300 to 350"; in (4), substituted "Administrative Rules of Montana" for "Montana Administrative Code".

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Swine less than 3 months of age exempt, 15-6-207.

15-24-932 through 15-24-940 reserved.

15-24-941. Assessment and taxation of migratory livestock. (1) All livestock that are assessed on the method provided in 15-24-911(1)(a) must be assessed in the county in which they are located on March 1. The county in which livestock are assessed is their home county.

(2) A livestock owner must pay the total property tax levied on his livestock for the year of assessment to the county treasurer of the home county.

History: **En. Sec. 4, Ch. 663, L. 1979.**

15-24-942. Apportionment of migratory livestock tax among counties. (1) When livestock that are assessed on the method provided in 15-24-911(1)(a) are moved from the home county to another county, the owner must within 15 days notify the assessors of the home county and of the county to which the cattle have been moved. He must provide the information required in 15-24-903 to the assessor of the county to which the livestock are moved.

(2) The property tax on migratory livestock is prorated among the counties in which the livestock have been located in any year in proportion to the time the livestock spent in each county during the year.

(3) The home county assessor shall indicate on the assessment rolls any livestock that have been located in more than one county during the year. When the treasurer collects the tax on migratory livestock, he shall:

(a) remit to the state that portion of the tax raised by statewide levies; and

(b) place the remainder in a migratory livestock fund.

History: **En. Sec. 5, Ch. 663, L. 1979.**

15-24-943. Distribution of migratory livestock fund. (1) On or before July 1 of each year, the treasurer shall cause a warrant to be issued from the migratory livestock fund to each county for the amount of prorated livestock tax due to that county under the provisions of 15-24-942(2).

(2) The amount remaining in the fund after the warrants have been issued must be distributed to the proper fund according to the tax levies made during the year the assessment was levied.

(3) Money received from other counties under subsection (1) must be distributed to the proper fund according to the tax levies made during the year the assessment was levied.

History: **En. Sec. 6, Ch. 663, L. 1979.**

Part 10

Custom Combines

15-24-1001. Custom combiner's tax — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301, motor vehicle license fees and gross vehicle weight fees, overwidth and overheight permits, Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth and overheight permits, Montana residents engaged in the business of custom combining may

pay the annual farm gross vehicle weight fees and a fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

(3) The fee required by this section must be collected by the department of highways. Upon payment of the fee, the department of highways must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in his business of custom combining in the state, which device is valid for the calendar year in which the fee is collected.

(4) All fees collected under this section must be distributed not later than January 31 immediately following the period of license as follows: 62 ½ % to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½ % to the state special revenue fund for the department of highways.

(5) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(6) Any owner or operator of any equipment included in the unit definition in subsection (1) or (2) of this section who violates any provision of this section is guilty of a misdemeanor and punishable by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both.

History: En. 84-6015 by Sec. 1, Ch. 371, L. 1974; amd. Sec. 1, Ch. 50, L. 1975; R.C.M. 1947, 84-6015; amd. Sec. 1, Ch. 206, L. 1979; amd. Sec. 19, Ch. 581, L. 1979; amd. Sec. 2, Ch. 48, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 48 deleted "for a period beginning July 1 and ending October 31" after "per unit" at end of the first sentence in (1); at end of first sentence in (2), deleted "for a period beginning May 1 and ending October 31 of the same year" after "per unit"; at end of (3), substituted "the calendar year . . ." for "a period beginning July 1 and ending October 31"; and in (4), changed "December 1" to "January 31".

Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part 11

Leasehold and Other Interests in U.S. Property

Part Cross-References

Exemption of United States property, 15-6-201.

15-24-1101. Federal property held under contract by private person subject to taxation. Real and/or personal property of the United States or any department or agency thereof held under contract of sale, lease, or other interest or estate therein by any person for his exclusive use shall be subject to assessment for ad valorem property taxation as provided in this part; provided that this part shall not apply to real property held and in immediate use and occupation by this state or any county, municipal corporation, or political subdivision therein.

History: En. Sec. 1, Ch. 212, L. 1951; R.C.M. 1947, 84-6101.

15-24-1102. Federal property held under contract of sale. When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, the real property shall be assessed and taxed as defined in 15-6-131 through 15-6-140 and 15-8-111 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property.

History: En. Sec. 2, Ch. 212, L. 1951; amd. Sec. 66, Ch. 566, L. 1977; R.C.M. 1947, 84-6102; amd. Sec. 22, Ch. 693, L. 1979.

15-24-1103. Federal property held under lease. When the property is held under lease, other interest, or estate therein less than the fee, except under contract of sale, the property shall be assessed and taxed as for the value, as defined in 15-6-131 through 15-6-140 of such leasehold, interest, or estate in the property and the lien for the tax shall attach to and be enforced against only the leasehold, interest, or estate in the property. When the United States authorizes the taxation of the property for the full assessed value of the fee thereof, the property shall be assessed for full assessed value as defined in 15-8-111.

History: En. Sec. 3, Ch. 212, L. 1951; amd. Sec. 67, Ch. 566, L. 1977; R.C.M. 1947, 84-6103; amd. Sec. 23, Ch. 693, L. 1979.

15-24-1104. Collection of taxes on interests in United States lands. In addition to all other remedies available for the collection of taxes, all taxes levied in any year against property held as under the provisions of this part shall be a debt due and owing from the person so holding such property as of the date of delinquency for taxes on property for such tax year. If any such tax be not paid within 1 year from such date, the county within which such property is located may institute for itself, the state of Montana, and all other municipal corporations sharing in such taxes an action for the collection of said taxes, together with interest, costs, and other lawful charges thereon. At the time of commencement of such action, the county shall have the benefit of all laws of this state pertaining to provisional remedies against the properties, either real or personal, of said person.

History: En. Sec. 4, Ch. 212, L. 1951; R.C.M. 1947, 84-6104.

Cross-References

Collection of taxes by suit, Title 15, ch. 24, part 11.

Part 12

State and Other Exempt Property

Part Cross-References

Exemption of state and municipal property, 15-6-201.

15-24-1201. State and other exempt property held under contract — when taxable. Property of the state of Montana or any department, agency, or subdivision thereof or any other property not subject to ad valorem tax to the owner thereof by reason of the legal status of the owner, held under contract of sale or lease with option to purchase with lease moneys applicable to purchase price by any person for his exclusive use, shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: En. Sec. 1, Ch. 39, L. 1965; R.C.M. 1947, 84-204.

15-24-1202. Taxable interests in state and other exempt property — assessment. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, such property shall be assessed to such person and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid, provided that the lien for such tax neither attach to, impair, nor be enforced against any interest of the state of Montana or any department, agency, or subdivision thereof.

History: En. Sec. 2, Ch. 39, L. 1965; R.C.M. 1947, 84-205.

15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions. After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. **(Last sentence applicable to taxable periods beginning after December 31, 1983.)**

History: En. Sec. 1, Ch. 370, L. 1969; amd. Sec. 1, Ch. 387, L. 1977; R.C.M. 1947, 84-207; amd. Sec. 3, Ch. 683, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes. The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

History: En. Sec. 2, Ch. 370, L. 1969; R.C.M. 1947, 84-208.

Cross-References

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

15-24-1205. Privilege tax — assessment and collection — no lien. The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall not become a lien against the property and no such tax-exempt property may be attached, encumbered, sold, or otherwise affected for the collection of the tax imposed hereunder.

History: **En. Sec. 3, Ch. 370, L. 1969; R.C.M. 1947, 84-209.**

15-24-1206. County suit for delinquent privilege tax. A tax due and unpaid under 15-24-1203 through 15-24-1205 shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by 15-24-1203 through 15-24-1205 or any portion thereof is not paid at the time the same becomes delinquent, the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest, and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof and the county shall have the same remedies against the possessor user as any other judgment docket.

History: **En. Sec. 4, Ch. 370, L. 1969; R.C.M. 1947, 84-210.**

15-24-1207. *(Applicable to taxable periods beginning after December 31, 1983)* **Reporting requirements — rules.** (1) Each private person who is a possessor or a beneficial user of tax-exempt property subject to tax pursuant to 15-24-1203 must, on or before March 1 each year, file with the department of revenue a statement of the possession or other beneficial use of tax-exempt property in the preceding calendar year and the value thereof. The statement must be in the form prescribed by the department and must be verified by the possessor or beneficial user or, in the case of an association or corporation, by an officer of the association or corporation. The statement must include:

(a) the name and address of the person, association, or corporation;

(b) the location of the tax-exempt property; and

(c) the market value in dollars and cents of the tax-exempt property.

(2) The department may adopt any reasonable rules necessary to insure that the possessor or other beneficial user of tax-exempt property complies with the provisions of this part.

History: **En. Sec. 1, Ch. 683, L. 1983.**

Compiler's Comments

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

Cross-References

Centrally administered tax-exempt property, 15-23-111.

Part 13

Montana Economic Land Development Act

15-24-1301. Short title. This part may be cited as "The Montana Economic Land Development Act".

History: En. 84-7501 by Sec. 1, Ch. 549, L. 1975; R.C.M. 1947, 84-7501.

15-24-1302. Policy. The legislature finds that as a state we currently face problems in development that not only cause concern for our future but also could cause cutbacks in our state's growth and proper development. Since many of these concerns are based on land use decisions, the state should develop a land use policy which will direct Montana's land use expansion through the enactment of a program establishing:

(1) local decision-making authority and control as primary factors in the determination of land use patterns;

(2) tax incentive programs for land and structures based on proper land use, providing tax benefits for proper land use and tax penalties for improper land use;

(3) a land use policy that does not impede economic progress, but which aids in the development of a program which will meet the social and economic challenges brought about through economic development;

(4) land use procedures, supplementary to zoning through a local control structure providing for continuous action, which do not conflict with Title 76, chapter 2 (or that chapter as it may be amended or recodified);

(5) in general, a system of proper land use developed by a determination of the impact on an area, beneficial or otherwise, and providing tax incentives and penalties based thereon to curb improper development patterns.

History: En. 84-7502.1 by Sec. 1, Ch. 582, L. 1977; R.C.M. 1947, 84-7502.1.

15-24-1303. Purpose. Montanans are faced by a nation actively searching for timber, coal, minerals, and recreational opportunities. This part is designed to establish Montana's developmental goals in a unique way: by placing our future land development within a system controlled by taxation as well as land regulation. Specific goals are:

(1) to encourage an inward pattern of urban growth which will promote greater population density on developed land within the urban areas and correspondingly provide a greater percentage of open space through control of sprawl development;

(2) to guide industrial and commercial development in Montana;

(3) to develop a program which is controlled and directed on a local level, with the actual land use direction and classification left wherever possible to the local land owner, working within existing standards, classifications, and land use practices; and

(4) in general, to provide a directional land use policy for Montana that is based on the principles of desirable growth through the development of local control rather than regulation by preemption.

History: En. 84-7503.1 by Sec. 2, Ch. 582, L. 1977; R.C.M. 1947, 84-7503.1.

15-24-1304. Definitions. As used in this part, the following definitions apply:

(1) "Central business district" means that portion of land within the corporate limits of a city defined and delineated by the local governing body as forming the center of the city's financial, commercial, and professional activities.

(2) "Civic band" means that portion of land which extends from the core area to the corporate limits.

(3) "Construction period" means a period of time beginning with the issuance of a building permit and concluding when the construction is ready for its designed use or when the county assessor determines the structure to be substantially completed. In those cases where building permits are not issued, the beginning of the period is that time determined by the governing body as the start of construction. In no case may the construction period exceed 18 months.

(4) "Core area" means that portion of land within the corporate limits of a first-class or second-class city that includes the central business district and extends a minimum of one-half block beyond in all directions and a maximum of three blocks, including all streets and alleys adjacent to or within the area. The core area shall be as designated by the governing body.

(5) "Corporate limits", in the case of a consolidated city-county government, means the boundaries of a first-class or second-class city as they existed prior to consolidation.

(6) "Density" means the number of dwelling units per gross acre.

(7) "Dwelling unit" means any building or portion thereof providing complete, independent, and permanent living facilities for one family.

(8) "Governing body" means the governing authority of any city or town or any joint city-county governing authority organized pursuant to law.

(9) "Land". For the purposes of this part, there are two main categories of land: vacant and unimproved and developed. Each of these two categories can be defined in terms of the principal use (or nonuse) made of the land:

(a) developed land—land used principally for residential, industrial, or commercial purposes. The types of land use under this category are:

(i) residential land—land used for varying concentrations of dwellings designed to meet contemporary building and living standards;

(ii) industrial land—land used for manufacturing, converting, processing, assembling, dismantling, refining, or producing a material or product; and

(iii) commercial land—land used for business purposes principally in the provision of services or the wholesale or retail selling of goods.

(10) "Multifamily dwelling" means a structure consisting of more than one dwelling unit.

(11) "Neighborhood commercial area" means a cluster of convenience retail and personal service establishments that secure their principal trade by supplying the daily needs of the population residing within a geographical district defined by local government. The location and quantity of land within the neighborhood commercial area shall be a business island not more than 4 acres in size and with no business frontage extending more than 600 feet along any street.

(12) "Planned unit development" (PUD) means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each

other and having open space and community facilities in a common ownership or use.

(13) "Regional commercial area" means land adjacent to a neighborhood commercial area that accommodates business and trade facilities that are major in nature and generally require sites in excess of 4 acres and that serve the needs of a community or region. The quantity of land within a regional commercial area may not exceed 40 acres and may not contain more than one-half mile of frontage on any given street or highway.

(14) "Remodeling" means expansion or reconstruction of a structure, building, or other man-made object which increases its taxable value by at least 2 ½%, as determined by the department of revenue or its agents.

(15) "Single family dwelling" means a detached or semiattached dwelling unit.

(16) "State administering agency" means the department of commerce.

(17) "Vacant unimproved land" means privately owned land in areas zoned residential or commercial that have not been developed for any use defined in subsection (9).

(18) "Value" means taxable value.

(19) "Zoning" means the regulation by a governing body of the use of land or structures thereon, or both, within a designated portion of the jurisdictional area of the governing body, as authorized under Title 76, chapter 2, part 3, or that part as it may be amended or recodified.

History: En. 84-7504.1 by Sec. 3, Ch. 582, L. 1977; R.C.M. 1947, 84-7504.1; amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (16).

15-24-1305. Operation. Cities shall implement the following procedure in adopting or developing provisions of this part: first- or second-class cities already planned and zoned shall adopt the provisions of this part which will become effective on January 1, 1978, or thereafter if an initiative for adoption is signed by at least 15% of the registered voters of that city and a majority of those voting on the question in a special election or in the next general election vote for its implementation.

History: En. 84-7505.1 by Sec. 4, Ch. 582, L. 1977; R.C.M. 1947, 84-7505.1.

15-24-1306. Land classified as residential — assessment provisions. The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be residential. Plans for residential land shall further be incorporated according to the most desirable types of residential buildings for the land categories. These categories can be but are not limited to single family (low density), single family (high density), duplex, multifamily (low density), and multifamily (high density). All new construction of residential buildings shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Benefits and penalties for new construction shall apply to the land and the improvements thereon and will be in accordance with the following:

(1) If vacant unimproved land is not marketable because of local conditions, the governing body shall grant zoning variances to conform with established neighborhood patterns that will increase the marketability of such land. The governing body, in accordance with 15-24-1314 may extend the 5-year period as to existing residential subdivisions in which the vacant lots are being developed by new residential construction within a reasonable time under existing economic conditions.

(2) Residential construction on land served by municipal water, sewer, and street systems that is within the civic band designated for that use shall be taxed at 90% of taxable value for 10 years. In the 11th and all subsequent years, the property shall be taxed at its full taxable value.

(3) New residential construction on land designated for other than residential use within the civic band shall be taxed at 125% of taxable value for 10 years. Beginning with the 11th year, the percentage shall be reduced annually by equal increments over a 10-year period until the taxable value is reached in the 20th year. In subsequent years, the property shall be taxed at 100% of taxable value.

History: En. 84-7508.1 by Sec. 5, Ch. 582, L. 1977; R.C.M. 1947, 84-7508.1.

15-24-1307. Land classified as commercial — assessment provisions. The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be commercial. Owners of commercial buildings under construction shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Benefits and penalties for new construction shall apply to the land and the improvements thereon and will be in accordance with the following:

(1) Existing vacant unimproved land within the core area and classified as commercial shall be taxed at current taxable values for 5 years after passage of this act. If at that time the land is still vacant, 5% shall be added annually to the taxable value to a maximum of 50%. Thereafter, the land shall be taxed at 150% of taxable value until it is converted to commercial use.

(2) New commercial construction or expansion of an existing commercial enterprise within the core area on land classified as commercial may not be taxed during its construction period. In the first year after construction is completed, the property shall be taxed at 10% of its taxable value. Each year thereafter, the percentage shall be increased by 10% until the taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of taxable value.

(3) New commercial construction or expansion of an existing commercial enterprise within the civic band and in an area designated by the governing body as a neighborhood commercial area may not be taxed during the construction period. In the first year after construction, the property shall be taxed at 20% of its taxable value. Each year thereafter, the percentage shall be increased by 20% until the taxable value is attained in the fifth year. In subsequent years, the property shall be taxed at 100% of its taxable value. New commercial construction not included in a neighborhood commercial or regional commercial area shall be taxed during the construction period. For 10 years after construction, it shall be taxed at 125% of taxable value. Beginning in the 11th year after construction, the percentage shall be decreased at a rate of 5% a year for 5 years.

(4) New commercial construction or expansion of an existing commercial enterprise within the civic band and in an area designed by the governing body as a regional commercial area may not be taxed during the construction period. In the first year after construction, the property shall be taxed at 33 ⅓ % of its taxable value. Each year thereafter, the percentage will be increased by 33 ⅓ % until the full taxable value is reached in the third year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(5) New commercial construction or expansion of an existing commercial enterprise is not eligible for the tax benefits or penalties described in subsections (2) through (4) if it is developed solely or in part on land purchased or cleared through tax increment financing as provided in 7-15-4282 through 7-15-4292.

History: En. 84-7509.1 by Sec. 6, Ch. 582, L. 1977; R.C.M. 1947, 84-7509.1.

15-24-1308. Land classified as industrial — assessment provisions. (1) The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be industrial. Owners of existing industrial buildings and grounds under construction or undergoing expansion that increases the taxable value of the property 10% shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Improvements classified as "new industrial property" under 15-6-135 may not qualify for benefits under this section. Industrial land and buildings shall be classified as Class A, B, C, or D for purposes of new construction or expansion of existing facilities.

(2) Tax benefits and penalties for new construction or expansion shall apply to the land and the improvements thereon in accordance with these classifications, determined by the governing body, based on compliance with the following environmental criteria. Construction of or expansion of industrial buildings and grounds:

(a) would not place an unreasonable burden on existing public services, such as highways, schools, and police and fire protection;

(b) would have sufficient water available for foreseeable needs;

(c) would meet existing air and water pollution requirements or that through reclamation the natural environment could be returned substantially to its original condition;

(d) would have adequate sewage and solid waste disposal facilities.

(3) Classes A, B, C, and D shall be determined and taxed as follows:

Class A—complies with criteria (2)(a) through (2)(d).
Class B—complies with criteria (2)(c) through (2)(d).
Class C—complies with criteria (2)(b) and (2)(d).
Class D—other than Class A, B, or C.

LAND CLASSIFICATION	INDUSTRIAL CLASSIFICATION			
	CLASS A	CLASS B	CLASS C	CLASS D
Residential	+ 50%	+100%	+150%	+200%
Commercial	- 25%	- 15%	-0-	+ 50%
Industrial	- 50%	- 30%	- 10%	+ 25%

The percentages above reflect the amount in addition (+) to the taxable value or less than (-) the taxable value. These percentages of taxable value shall be continuously applied to the land and the buildings for 10 consecutive years following their construction. The construction period may not be taxed for new industrial construction or expansion of an existing industry except as provided in 15-24-1307(3) and (5). Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of taxable value.

History: En. 84-7510.1 by Sec. 7, Ch. 582, L. 1977; R.C.M. 1947, 84-7510.1; amd. Sec. 24, Ch. 693, L. 1979.

15-24-1309. Centralized multifamily (high density) residential developments. New or expanded multifamily (high density) residential developments within the central business district or an area designated by the governing body or that is within the core area or within 1,000 feet of a designated neighborhood commercial area may not be taxed during the construction period. After construction is completed, the property shall be taxed at 50% of its taxable value for a period of 10 years. Each year thereafter, the percentage of taxable value shall be increased by 10% until the taxable value is attained in the 15th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

History: En. 84-7511.1 by Sec. 8, Ch. 582, L. 1977; R.C.M. 1947, 84-7511.1.

15-24-1310. Planned unit development — special incentives. Planned unit developments approved by the governing body shall receive tax incentives as follows:

(1) Construction of industrial, commercial, or residential facilities which conform to the PUD may not be taxed during the construction period.

(2) If the PUD is within the civic band, the property shall be taxed at 75% of its taxable value for 10 years following construction. Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of its taxable value.

(3) The provisions of this section are unique and apart from other provisions in this part and shall apply whenever the conditions of a PUD are met.

History: En. 84-7512.1 by Sec. 9, Ch. 582, L. 1977; R.C.M. 1947, 84-7512.1.

15-24-1311. Remodeling of homes, buildings, or structures — assessment provisions. (1) Remodeling of existing buildings or structures shall receive tax benefits during the construction period and for the following 5 years in accordance with the following schedule. These percentages shall be applied to any increase in taxable value caused by the remodeling:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) If an existing home, building, or structure is not remodeled as defined in this chapter within the 10 years following July 1, 1979, a 5% increase shall

be added to its taxable value each year that the owner fails to remodel to a maximum of 50%. After a home, building, or structure has been remodeled, the provisions of this section shall be considered to be started again with the beginning of a new 10-year period.

(3) The governing body shall waive the provisions of this section unless it can be demonstrated that lack of regular maintenance over a period of time has failed to maintain the value of the property and that depreciation has taken place to lower the value of the property more than 2 ½%.

History: **En. 84-7513.1 by Sec. 10, Ch. 582, L. 1977; R.C.M. 1947, 84-7513.1; amd. Sec. 25, Ch. 693, L. 1979.**

15-24-1312. Special conditions. (1) Any land subclassified under this part may be, at the owner's option, reclassified at any time to a new subclassification within the same classification if allowed under the specifications of that subclassification as set forth in this part.

(2) Any increase in taxes necessary to pay for any loss of revenue caused by this part shall be raised by an increased mill levy rather than by an increase in the valuation of specific property.

(3) Any property owned by one or more persons or companies may be so classified as to meet one or more of the standards of this part.

(4) Hospitals, churches, rest homes, nursing homes, governmental buildings, schools, colleges, or any charitable institution exempt from taxation under 15-6-201 through 15-6-208 may be constructed in any of the classified land areas without penalty.

(5) Any aggrieved taxpayer may appeal any decision involving tax benefits or penalties rendered by the governing body under this part to the state tax appeal board.

(6) Any provisions of this part that could affect land which was unzoned at the time of passage may be applied at the discretion of the governing body if planning in jurisdiction has commenced. Should the plan not be accepted, the provisions of this part shall be waived. However, no tax savings or penalties on any property affected will be returned or charged to the respective landowner by its governing body.

History: **En. 84-7514.1 by Sec. 11, Ch. 582, L. 1977; R.C.M. 1947, 84-7514.1.**

15-24-1313. Exemptions. No provision of this part that imposes a tax penalty shall apply to the primary private residence owned and occupied by a person or persons over 62 years of age.

History: **En. 84-7516.1 by Sec. 13, Ch. 582, L. 1977; R.C.M. 1947, 84-7516.1.**

15-24-1314. Changes in boundaries. (1) After final adoption of plan, any property owner may petition for a change in the boundary of any land use classification. Within 10 days of receipt of the petition, the governing body shall forward a copy of the petition to the affected planning organization and the appropriate state agencies. After 60 days but within 120 days or receipt of a petition, the governing body shall advertise a public hearing to be held and serve notice on the persons and agencies that have an interest in the subject of the petition, at least 10 days prior to the hearing date.

(2) No petition shall be approved unless the petitioner submits to the governing body proof that the area is needed for a use other than that for which the land is classified and unless at least two of the following criteria apply:

(a) the land is not usable or adaptable for the use for which it is classified or the new use of the land would be more beneficial to the area;

(b) conditions and trends of development have so changed since the adoption of the existing classification that the proposed classification is reasonable and desirable and the land is capable of sustaining the use proposed; and

(c) the proposed change shall offer the community or individual affected relief from impact caused by an outside or uncontrollable influence facing the community because of new and substantial development.

(3) Should the governing body approve the change in classification, it shall modify the existing land use plan to reflect such changes and shall change any taxable valuations as may be necessary.

(4) The governing body shall act on the petition within 120 days of its receipt.

History: En. 84-7517.1 by Sec. 14, Ch. 582, L. 1977; R.C.M. 1947, 84-7517.1.

15-24-1315. Nonconforming uses. The lawful use of land or buildings existing on the date of establishment of any classification or subclassification provided for under this part may be continued without a tax change, although the use does not conform to this part, until such time as it is remodeled or changed to a different use.

History: En. 84-7518.1 by Sec. 15, Ch. 582, L. 1977; R.C.M. 1947, 84-7518.1.

15-24-1316. Reappraisal by department and implementation of tax benefits and penalties. (1) The taxable value of property shall always include any increases or decreases determined by the department of revenue pursuant to a reappraisal plan adopted under its authority. Any increases or decreases in value specifically provided for under the terms of this part shall be made after consideration of all such reappraisals.

(2) The department and its agents shall enter any increase or decrease in taxable value required by this part on the county assessment rolls.

History: En. 84-7519.1 by Sec. 16, Ch. 582, L. 1977; R.C.M. 1947, 84-7519.1.

15-24-1317. Authority to adopt rules. The state administering agency shall adopt such rules pursuant to the Montana Administrative Procedure Act as are necessary for the administration of this part.

History: En. 84-7515.1 by Sec. 12, Ch. 582, L. 1977; R.C.M. 1947, 84-7515.1.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

15-24-1318. Preparation of rules. In preparing rules to implement this part, the state administering agency shall advise all affected local government bodies of proposed rules, consider suggestions from them, and work in conjunction with them.

History: En. 84-7520.1 by Sec. 17, Ch. 582, L. 1977; R.C.M. 1947, 84-7520.1.

Part 14

New Industry — Real Property Improvements

15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "New or expanding" means that the manufacturing industry is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) or that the manufacturing industry has added qualifying improvements to its property within the same jurisdiction since July 1, 1981.

(2) "Manufacturing industry" means an industry that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

History: **En. Sec. 2, Ch. 564, L. 1981.**

15-24-1402. New or expanding manufacturing industry — assessment. (1) In the first 5 years after a construction permit is issued, improvements to real property that represent new manufacturing industry construction or expansion of an existing manufacturing industry shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by resolution, following a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of improvements that qualify for the tax treatment that is to be allowed in the taxing jurisdiction.

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body must indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change pursuant to this section.

History: **En. Sec. 3, Ch. 564, L. 1981.**

Part 15

Remodeling of Buildings or Structures

15-24-1501. Remodeling of buildings or structures — assessment provisions. (1) Remodeling of existing buildings or structures may receive tax benefits during the construction period and for the following 5 years in accordance with the following schedule. The percentages shall be applied to any increase in taxable value caused by the remodeling:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to receive the tax benefits described in subsection (1), the governing body of a county or incorporated city or town must have approved by resolution the use of the schedule provided for in subsection (1) for their respective jurisdiction.

History: En. Sec. 2, Ch. 599, L. 1981.

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

INDIVIDUAL INCOME TAX

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15-30-331. Certified copies of tax returns to taxpayer — fee.

Chapter Cross-References

Reservation of power to tax certain persons and property within land purchased by the United States under Art. I, sec. 8, par. 17, U.S. Const., 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to the United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property within land purchased by the United States for national forest purposes, 2-1-210.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

Failure to pay income tax as evidence of nonresidency for university purposes, 20-25-504.

Income tax deduction for land sale to beginning farmers, 80-12-211.

Tax-exempt agricultural loan authority bonds, 80-12-305.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

Part 1

Rate and Return of Tax

15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Purposely" is as defined in 45-2-101.

(14) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(15) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(16) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(17) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(18) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations.

History: En. Sec. 1, Ch. 181, L. 1933; re-en. Sec. 2295.1, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973; R.C.M. 1947, 84-4901; amd. Sec. 1, Ch. 476, L. 1979; amd. Sec. 1, Ch. 648, L. 1979; amd. Sec. 1, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 548, L. 1981.

Compiler's Comments

1980 Initiative Amendment: Initiative No. 86 inserted subsections (1), (2), and (8).

1981 Amendment: Chapter 548, L. 1981, inserted ", but unadjusted by subsection (2) of 15-30-103" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(a); inserted ", but unadjusted by subsections (7) and (8) of 15-30-112," and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(b); inserted "but unadjusted by subsection (2) of 15-30-122" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(c).

Cross-References

Business inventory credit, 15-6-136 (compiler's comments).

15-30-102. Construction of net income. For the purpose of raising revenue, the net income required to be shown on returns under this chapter and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. All income except what has been expressly exempted under the provisions of this chapter and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States shall be included and considered in determining the net income of taxpayers within the provision of this chapter.

History: **En. Sec. 31, Ch. 181, L. 1933; re-en. Sec. 2295.31, R.C.M. 1935; R.C.M. 1947, 84-4932.**

Cross-References

Deferred income of public employee not subject to taxation until distribution, 19-2-103.

Tax-deferred annuity program for teachers, 19-4-208.

Payments received under Title 60, ch. 4, part 3, for relocation caused by highway land acquisition not income, 60-4-309.

Payments received under Title 70, ch. 31, for relocation caused by federally assisted programs not income, 70-31-106.

15-30-103. Rate of tax. (1) There shall be levied, collected, and paid for each taxable year commencing on or after December 31, 1968, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

(a) on the first $1,000 of taxable income or any part thereof, 2%;

(b) on the next $1,000 of taxable income or any part thereof, 3%;

(c) on the next $2,000 of taxable income or any part thereof, 4%;

(d) on the next $2,000 of taxable income or any part thereof, 5%;

(e) on the next $2,000 of taxable income or any part thereof, 6%;

(f) on the next $2,000 of taxable income or any part thereof, 7%;

(g) on the next $4,000 of taxable income or any part thereof, 8%;

(h) on the next $6,000 of taxable income or any part thereof, 9%;

(i) on the next $15,000 of taxable income or any part thereof, 10%;

(j) on any taxable income in excess of $35,000 or any part thereof, 11%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section.

History: **En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; re-en. Sec. 2295.2, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969; R.C.M. 1947, 84-4902; amd. Sec. 2, I.M. No. 86, approved Nov. 4, 1980.**

Compiler's Comments

1980 Initiative Amendment: Inserted "on the following brackets of taxable income as adjusted under subsection (2)" after "a tax" near the end of the lead-in to subsections (1)(a) through (1)(j); and added subsection (2).

Cross-References

Credit for foreign taxes, 15-30-124.

Investment credit, 15-30-162.

Alternative energy system credit, 15-32-201.

Credit for public contractor's license fee, 15-50-207.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-30-104. Repealed. Sec. 3, Ch. 422, L. 1981.

History: En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971; R.C.M. 1947, 84-4902.1(part).

15-30-105. Tax on nonresident — alternative tax based on gross sales. (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of ½ of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 181, L. 1933; re-en. Sec. 2295.3, R.C.M. 1935; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971; R.C.M. 1947, 84-4903; amd. Sec. 1, Ch. 422, L. 1981.

Compiler's Comments

1981 Amendment: In the second sentence of subsection (2), substituted "tax" for "taxes" before "imposed" and deleted "and 15-30-104" after "15-30-103".

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-30-106. Tax on lump-sum distributions. (1) There is imposed a separate tax on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended.

(3) All means available for the administration and enforcement of income taxes shall be applied to the tax on lump-sum distributions.

History: En. Sec. 1, Ch. 380, L. 1983.

15-30-107 through 15-30-110 reserved.

15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business

corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation. **(Subsection (2)(l) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)**

History: En. Sec. 5, Ch. 181, L. 1933; re-en. Sec. 2295.5, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971; amd. Sec. 1, Ch. 158, L. 1975; amd. Sec. 1, Ch. 411, L. 1975; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 84-4905; amd. Sec. 1, Ch. 483, L. 1981; amd. Sec. 2, Ch. 537, L. 1981; amd. Sec. 1, Ch. 546, L. 1981; amd. Sec. 1, Ch. 550, L. 1981; amd. Sec. 1, Ch. 13, L. 1983; amd. Sec. 1, Ch. 634, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 13 inserted (5). Chapter 634 inserted (2)(l).

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation."

1981 Amendments: Chapter 483 added subsection (2)(k).

Chapter 537 added subsection (4).

Chapter 546 inserted "Notwithstanding the provisions of the Federal Internal Revenue Code of 1954, as labeled or amended" at the beginning of (2); inserted "all" at the beginning of (2)(a); and inserted subsection (2)(b).

Chapter 550 added subsection (2)(d).

Cross-References

Exemption of bonds financing county-operated hospitals and nursing homes, 7-34-2416.

Income from electing small business corporations, 15-31-202.

Deduction allowed for capital investment in a building for an energy conservation purpose, 15-32-103.

Deferred income of public employee not subject to taxation until distribution, 19-2-103.

Tax-deferred annuity program for teachers, 19-4-207.

Exemption for benefits paid under Judges' Retirement System, 19-5-704.

Exemption for benefits paid under Sheriffs' Retirement System, 19-7-705.

Exemption for benefits paid under Game Wardens' Retirement System, 19-8-805.

Payment received under Title 60, ch. 4, part 3, for relocation caused by highway land acquisition not income, 60-4-309.

Railroad rehabilitation revenue bonds exemption, 60-11-1110.

Rolling stock revenue bonds exemption, 60-11-1210.

Exemption of airport bonds, 67-11-303.

Payment received under Title 70, ch. 31, for relocation caused by federally assisted programs not income, 70-31-106.

Exemption of bonds issued by conservancy district, 85-9-626.

Exemption of bonds issued by Board of Housing, 90-6-125.

Montana Health Facility Authority obligations — tax exemption, 90-7-112.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-30-112. Exemptions. (1) Except as provided in subsections (7) and (8), in the case of an individual, the exemptions provided by subsections (2) through (6) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through

(6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.

(8) For taxable years beginning after December 31, 1980, the department, by November 1 of each year, shall multiply all the exemptions provided in this section unadjusted by subsection (7) by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(a) thru (e), (i); amd. Sec. 8, Ch. 698, L. 1979; amd. Sec. 3, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 548, L. 1981.

Compiler's Comments

1980 Initiative Amendment: Initiative No. 86 inserted "and (8)" after "subsections (7)" in subsection (1); added subsection (8).

1981 Amendment: Chapter 548, L. 1981, added "as amended by section 4, Chapter 548, Laws of 1981" to (7).

Cross-References

Information regarding blindness exemption furnished to Division of Motor Vehicles, 15-30-303.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

15-30-113. General definition of dependent. (1) For purposes of 15-30-112, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(a) a son or daughter of the taxpayer or a descendant of either;

(b) a stepson or stepdaughter of the taxpayer;

(c) a brother, sister, stepbrother, or stepsister of the taxpayer;

(d) the father or mother of the taxpayer or an ancestor of either;

(e) a stepfather or stepmother of the taxpayer;

(f) a son or daughter of a brother or sister of the taxpayer;

(g) a brother or sister of the father or mother of the taxpayer;

(h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;

(i) an individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or

(j) an individual who:

(i) is a descendant of a brother or sister of the father or mother of the taxpayer;

(ii) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability; and

(iii) before receiving such institutional care, was a member of the same household as the taxpayer.

(2) For purposes of 15-30-112 and this section:

(a) the terms "brother" and "sister" include a brother or sister by the half blood;

(b) in determining whether any of the relationships specified in this section exist, a legally adopted child of an individual shall be treated as a child of such individual by blood.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(f), (g).

15-30-114. Additional exemption for dependent child with handicap. (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents shall be allowed for taxable years beginning after December 31, 1976, for each dependent child with a handicap.

(2) In order to be eligible for the exemption, a dependent child with a handicap must, for the taxable year of the taxpayer, have as his principal place of abode the home of the taxpayer and have a permanent handicap of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent handicap after he reaches the age of majority if he continues to be a dependent.

(3) For taxable years beginning after December 31, 1978, and before January 1, 1981, the additional exemption for a dependent child with a handicap is twice the amount allowed for dependents as adjusted under section 9, Chapter 698, Laws of 1979.

History: En. 84-4910.1 by Sec. 1, Ch. 500, L. 1977; R.C.M. 1947, 84-4910.1; amd. Sec. 10, Ch. 698, L. 1979.

15-30-115. Physician's verification of handicap required. A taxpayer claiming the exemption provided for in 15-30-114 must provide with his income tax statement written documentation by a licensed physician that the handicap qualifies under that section.

History: En. 84-4910.2 by Sec. 2, Ch. 500, L. 1977; R.C.M. 1947, 84-4910.2.

15-30-116. Veterans' bonus or military salary — exemptions. (1) All payments made under the World War I bonus law, Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

History: (1)En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973; Sec. 84-4907.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 326, L. 1975; Sec. 84-4907.2, R.C.M. 1947; R.C.M. 1947, 84-4907.1, 84-4907.2.

Cross-References

Special consideration allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-117 through 15-30-120 reserved.

15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974, except that:

(a) the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse;

(b) the limitation set forth in section 214(e)(1) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, does not apply when the taxpayers file separately on the same form; and

(c) the deduction for child and dependent care expenses shall be divided equally between the taxpayers;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year.

History: En. Sec. 6, Ch. 181, L. 1933; re-en. Sec. 2295.6, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955; amd. Sec. 1, Ch. 102, L. 1977; amd. Sec. 2, Ch. 574, L. 1977; amd. Sec. 5, Ch. 576, L. 1977; R.C.M. 1947, 84-4906; amd. Sec. 1, Ch. 90, L. 1979; amd. Sec. 1, Ch. 129, L. 1979; amd. Sec. 3, Ch. 480, L. 1981; amd. Sec. 4, Ch. 533, L. 1981; amd. Sec. 20, Ch. 614, L. 1981; amd. Sec. 1, Ch. 118, L. 1983.

Compiler's Comments

1983 Amendment: At end of (3), substituted "except that" for "However"; inserted (3)(b) and (3)(c); and made minor changes in punctuation and phraseology.

1981 Amendments: Chapter 480 deleted former subsection (4) relating to energy investment credits deductible under 15-32-103.

Chapter 533 added subsection (5).

Chapter 614 added subsection (6).

Cross-References

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

15-30-122. *(Temporary)* **Standard deduction.** (1) In the case of a resident individual, a standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except in the case of a single joint return of husband and wife the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.

15-30-122. *(Delayed application date)* **Standard deduction.** (1) In the case of a resident individual, a standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103. **(Applicable to taxable years beginning after December 31, 1984—sec. 2, Ch. 501, L. 1983.)**

History: **En. Sec. 8, Ch. 181, L. 1933; re-en. Sec. 2295.8, R.C.M. 1935; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. Ch. 357, L. 1971; R.C.M. 1947, 84-4908; amd. Sec. 11, Ch. 698, L. 1979; amd. Sec. 4, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 516, L. 1981; amd. Sec. 1, Ch. 501, L. 1983.**

Compiler's Comments

1983 Amendment: In (1) of the delayed version, in third sentence inserted the language making a single head of household eligible for $3,000 maximum standard deduction.

1981 Amendment: Chapter 516 increased the standard deduction from "15%" to "20%" of adjusted gross income in (1); increased the maximum standard from "$1,000" to "$1,500, as adjusted under the provisions of subsection (2)" in the middle of (1); increased the maximum standard deduction for a husband and wife filing a joint return from "$2,000" to "$3,000, as adjusted under the provisions of subsection (2)" at the end of the third sentence of (1); and added subsection (2).

1980 Initiative Amendment: Initiative No. 86 inserted "as adjusted under the provisions of subsection (2)" twice in (1); and added subsection (2).

15-30-123. Nondeductible items in computing net income. In computing net income, no deductions shall in any case be allowed in respect of:

(1) personal, living, or family expenses;

(2) any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

History: En. Sec. 9, Ch. 181, L. 1933; re-en. Sec. 2295.9, R.C.M. 1935; R.C.M. 1947, 84-4909.

15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this chapter for income taxes imposed by and paid to another state or country on income taxable under this chapter:

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient.

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this chapter.

(3) The allowable credit shall be computed by formula to be prescribed by the department.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959; amd. Sec. 181, Ch. 516, L. 1973; R.C.M. 1947, 84-4937.

15-30-125. Credit for energy-conserving investments. There is a credit against tax liability under this chapter as provided in 15-32-109.

History: En. Sec. 2, Ch. 480, L. 1981.

15-30-126. Small business corporation — deduction for donation of computer equipment to schools. A small business corporation electing to be taxed under the provisions of 15-31-202 is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services;

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions.

History: En. Sec. 2, Ch. 447, L. 1983.

15-30-127 through 15-30-130 reserved.

15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income — deductions. (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.

History: En. Sec. 7, Ch. 181, L. 1933; re-en. Sec. 2295.7, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973; R.C.M. 1947, 84-4907; amd. Sec. 1, Ch. 623, L. 1979; amd. Sec. 4, Ch. 480, L. 1981; amd. Sec. 1, Ch. 378, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (6).

1981 Amendment: Inserted "and the credit under 15-32-109" after "those deductions" and "or credit" after "such deductions" in (4).

15-30-132. Change from nonresident to resident or vice versa. If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The exemptions provided in 15-30-112 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state, abandoning his residence in the state, and establishing a residence elsewhere must file a return on the fractional basis. If he obtains employment outside the state without abandoning his Montana residence, then income from such employment is taxable in Montana.

History: En. Sec. 15, Ch. 181, L. 1933; re-en. Sec. 2295.15, R.C.M. 1935; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959; R.C.M. 1947, 84-4915.

15-30-133. Income tax involving partnership — partnership statements required. Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

History: En. Sec. 11, Ch. 181, L. 1933; re-en. Sec. 2295.11, R.C.M. 1935; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959; R.C.M. 1947, 84-4911.

15-30-134. Determination of marital status. For purposes of this chapter:

(1) the determination of whether an individual is married shall be made as of the close of his taxable year, except that if his spouse dies during his taxable year, such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(h).

15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; and

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of such estate or trust. In cases under subsections (a) and (d) of subsection (1), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1), the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary. If the taxpayer's net income for the taxable year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(5) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

History: En. Sec. 12, Ch. 181, L. 1933; re-en. Sec. 2295.12, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1955; R.C.M. 1947, 84-4912; amd. Sec. 1, Ch. 2, L. 1983; amd. Sec. 1, Ch. 260, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 2, in (1)(d), changed "an infant" to "a minor".

Chapter 260 deleted former (1)(e), which read: "income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary."; in (2), deleted second sentence, which read: "The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia.", in second sentence, substituted "(a) and (d)" for "(d) and (e)", and made minor changes in phraseology; at end of (3), deleted "except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131." and made a minor phraseology change; in (3), inserted former (4)(c) as second sentence after making a minor phraseology change; and deleted former (4)(a) and (b), which read: "(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary."

15-30-136. Computation of income of estates or trusts — exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) all benefits received as federal employees' retirement not in excess of $3,600;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid by first- or second-class cities for the Montana police officers' retirement system provided for by the metropolitan police law;

(o) all benefits not in excess of $360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

History: **En. Secs. 2, 3(1), (2), Ch. 260, L. 1983.**

15-30-137. Determination of tax of estates and trusts. The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

History: En. Sec. 3(3), Ch. 260, L. 1983.

15-30-138. Estates and trusts tax remedies. Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

History: En. Sec. 3(4), Ch. 260, L. 1983.

15-30-139 and 15-30-140 reserved.

15-30-141. Tax as personal debt. Every tax imposed by this chapter and all increases, interest, and penalties thereon shall be from the time they are due and payable a personal debt from the person or fiduciary liable to pay the same to the state.

History: En. Sec. 4, Ch. 181, L. 1933; re-en. Sec. 2295.4, R.C.M. 1935; R.C.M. 1947, 84-4904.

15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112(7) and (8), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after

crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 12, Ch. 698, L. 1979; amd. Secs. 5, 6, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 4, L. 1981; amd. Sec. 2, Ch. 477, L. 1981; amd. Sec. 3, Ch. 548, L. 1981.

Compiler's Comments

1980 Initiative Amendment: Initiative No. 86 inserted "as adjusted under the provisions of subsection (7)" twice in (1); inserted "as adjusted under the provisions of 15-30-112(7) and (8)" in the second sentence of (1); and added subsections (7) and (8).

1981 Amendments: Chapter 477 increased the time period within which to pay taxes due after notice from 30 to 60 days in (6).

Chapter 548 changed single individual gross income from "$940" to "$1,000" and married individuals gross income from "$1,880" to "$2,000" in the first sentence of (1).

Cross-References

Donation of $1 of refund to Public Campaign Fund, 13-37-303.

Penalty for failure to pay deficiency, 15-30-323.

Offset of tax refunds for debt due to state, 17-4-105.

Taxpayer to make return available to determine amount of special payment for relocation caused by highway land acquisition, 60-4-304.

15-30-143. Return of fiduciary. Every fiduciary (except receivers appointed by authority of law in possession of only part of the property of a taxpayer) shall make a return for the individual or estate or trust from whom he acts. Fiduciaries required to make returns under this section shall be subject to all the provisions of this chapter which apply to taxpayers.

History: En. Sec. 17, Ch. 181, L. 1933; re-en. Sec. 2295.17, R.C.M. 1935; amd. Sec. 10, Ch. 260, L. 1955; R.C.M. 1947, 84-4917.

15-30-144. Time for filing — extensions of time. (1) Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set forth such facts as the department considers necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of $1.

(2) An automatic 6-month extension of time for filing a return is allowed, provided that on or before the due date of the return, an application is made on forms available from the department or in writing to the department.

History: En. Sec. 29, Ch. 181, L. 1933; re-en. Sec. 2295.19, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1935; amd. Sec. 172, Ch. 516, L. 1973; amd. Sec. 1, Ch. 340, L. 1975; R.C.M. 1947, 84-4919; amd. Sec. 1, Ch. 169, L. 1981.

Compiler's Comments

1981 Amendment: Increased the automatic extension of time from 2 months to 6 months at the beginning of (2); deleted provisions allowing an additional extension of time (beyond 2 months) and setting a 6-month maximum for extensions with exceptions for members of the armed forces and persons living or traveling outside the U.S.

Cross-References

Department to provide for public campaign finance donation information, 13-37-303.

Interest payable for time filing date extended, 15-30-323.

Certified copies of returns, 15-30-331.

15-30-145. Revision of return by department — examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise such return. If any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties, and interest due the state from such taxpayer. Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due under any return shall be determined by the department within 5 years after the return was made and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period, notwithstanding the provisions of 15-30-322. In the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due and, where no return has been filed, the tax may be assessed at any time.

(2) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the

person rendering the return or any officer or employee of such person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; re-en. Sec. 2295.20, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1955; amd. Sec. 173, Ch. 516, L. 1973; R.C.M. 1947, 84-4920; amd. Sec. 2, Ch. 648, L. 1979.

15-30-146. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-145 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by 15-30-304, the statute of limitations shall not apply until 5 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations shall not apply for 2 additional years from the time specified in 15-30-145.

History: En. Sec. 2, Ch. 103, L. 1955; amd. Sec. 1, Ch. 61, L. 1967; R.C.M. 1947, 84-4920.1.

15-30-147. Application for revision — appeal. An application for revision may be filed with the department by a taxpayer within 5 years from the original due date of the return. If the taxpayer is not satisfied with the action taken by the department, he may appeal to the state tax appeal board as provided therein, which shall have authority to grant the claim or any part thereof.

History: En. Sec. 22, Ch. 181, L. 1933; re-en. Sec. 2295.22, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963; amd. Sec. 102, Ch. 405, L. 1973; amd. Sec. 174, Ch. 516, L. 1973; R.C.M. 1947, 84-4922.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-30-148. Judicial review. (1) The determination of the state tax appeal board may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer or the department within 6 months after the receipt of notice of the decision of the state tax appeal board. Proceedings for review shall be otherwise as specified under the Montana Administrative Procedure Act.

(2) The remedies provided by this chapter for the collection of the tax shall be stayed, and no assessment, distraint, or proceedings in court for collection of the taxes may be made, begun, or prosecuted until 90 days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957; amd. Sec. 103, Ch. 405, L. 1973; amd. Sec. 6, Ch. 155, L. 1977; R.C.M. 1947, 84-4923.1.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Review of disapproval of Department to refund overpayment of tax, 15-1-503.

15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of such excess shall be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145 and by 15-30-146 during which the department may determine tax liability, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within 60 days after the claim is approved; if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

(4) Except as hereinafter provided for, interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year, nor shall interest accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be

imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963; amd. Sec. 192, Ch. 516, L. 1973; R.C.M. 1947, 84-4956; amd. Sec. 1, Ch. 113, L. 1979; amd. Sec. 1, Ch. 589, L. 1981.**

Compiler's Comments

1981 Amendment: Divided subsection (2) and substituted current provision for one that set a limit for claiming a credit or refund of 5 years from date for filing the return or 1 year from overpayment (for complete text see sec. 1, Ch. 113, L. 1979); near the beginning of (4) deleted a provision that the subsection was effective with taxable years ending on or after Dec. 31, 1962; substituted "interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due" for "interest shall be allowed on overpayments at the rate of 6% per annum" near the beginning of (4).

Cross-References

Donation of $1 of refund to Public Campaign Fund, Title 13, ch. 37, part 3.

15-30-150. *(Temporary)* **Voluntary checkoff for nongame wildlife programs.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, and who is entitled to a refund may contribute to the funding of nongame wildlife programs in Montana by marking the appropriate box on the state income tax return.

(2) The department of revenue shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to nongame wildlife programs from the taxpayer's refunded amount. The provision shall be in substantially the following form:

Montana nongame wildlife funding. Check the appropriate blank if you wish to designate ______$2, ______$5, or ______$10 of your tax refund to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to designate ______$2, ______$5, or ______$10 for the same purpose.

(3) Money received under this section must be deposited in the nongame wildlife account established by 87-5-121. **(Terminates December 31, 1987—sec. 7, Ch. 627, L. 1983.)**

History: **En. Sec. 3, Ch. 627, L. 1983.**

15-30-151 through 15-30-160 reserved.

15-30-161. Purpose and definition. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector.

History: **En. 84-4960 by Sec. 1, Ch. 412, L. 1977; R.C.M. 1947, 84-4960; amd. Sec. 1, Ch. 111, L. 1979; amd. Sec. 1, Ch. 520, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202" for "individuals, estates, trusts, and small businesses that meet the definition established in this section" in the middle of the section; deleted subsection (2), which defined a small business as one eligible to be taxed under 15-31-202; and made minor changes in phraseology.

15-30-162. Investment credit. (1) There is allowed as a credit against the tax imposed by 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year or $500, whichever is less.

(4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended.

History: En. 84-4961 by Sec. 2, Ch. 412, L. 1977; R.C.M. 1947, 84-4961(part); amd. Sec. 2, Ch. 111, L. 1979; amd. Sec. 2, Ch. 422, L. 1981; amd. Sec. 2, Ch. 520, L. 1981; amd. Sec. 1, Ch. 704, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted last two sentences relating to section 46(a)(2)(F) of the IRC of 1954 and to certain qualified property defined by section 38 of the IRC of 1954; inserted (1)(a) and (1)(b); at end of (2) after "year is" deleted "the sum of"; in (2)(a) reduced percentage of federal credit from 30% to 5%; deleted former (2)(b) and (2)(c), which read: "(b) the investment credit carryovers carried to the taxable year as provided in subsection (4); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (4)."; in (3) after "taxable year" deleted remainder of former (3), which read: "In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000. In the case of a husband and wife who file separate returns, the investment credit may not exceed $2,500 plus 50% of the tax liability in excess of $2,500 unless the spouse of the taxpayer has no qualified investment for and no unused credit carryback or carryover to the taxable year of the spouse that ends with or within the taxpayer's taxable year.", and inserted "or $500, whichever is less"; and in (4) substituted existing language for former text, which read: "If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (3), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended."

Section 4, Ch. 704, L. 1983, made the amendments applicable to taxable years beginning after December 31, 1982.

1981 Amendments: Chapter 422 substituted "tax" for "taxes"; and deleted "and 15-30-104" after "15-30-103" near the beginning of (1).

Chapter 520 increased the amount of the investment credit from 20% of the federal credit to 30% of the federal credit.

Cross-References

Corporate investment credit, 15-31-123.

15-30-163 through 15-30-170 reserved.

15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments under federal social security.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(6) "Household income" means $0 or the amount obtained by subtracting $4,000 from gross household income, whichever is greater.

(7) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana, owned and occupied as a residence by the owner for at least 6 months of the claim period or occupied as a dwelling of a renter or lessee for at least 6 months of the claim period, and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(8) "Department" means the department of revenue.

(9) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent.

History: En. Sec. 1, Ch. 584, L. 1981; amd. Sec. 1, Ch. 134, L. 1983; amd. Sec. 1, Ch. 605, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 134, in (1), after "nontaxable income" deleted "except all payments received under federal social security"; inserted (1)(h); in (5), substituted "Gross household income" for "Household income" and deleted "except payments received under federal social security" after "all income"; inserted (6); and made minor phraseology changes. This amendment is applicable to claim periods beginning after December 31, 1982.

Chapter 605, in (1), after "received" substituted "as a result of fulfillment of federal social security eligibility requirements or payments comparable thereto" for "under federal social security"; in (1)(a), after "disability benefits" inserted exception of payments received by fulfillment of social security eligibility requirements; and in (5), after "all income" deleted "except payments received under federal social security". These amendments are not reflected in the statute because they are no longer applicable. See Effective Date note below.

Effective Date — Applicability: Section 2, Ch. 605, L. 1983, provided: "This act is effective on passage and approval and is applicable only to claim periods beginning after December 31, 1980, and before January 1, 1983. It is to be applied retroactively within the meaning of 1-2-109 for such periods."

15-30-172. Residential property tax credit for elderly — eligibility. In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual must have reached age 62 or older during the claim period for which relief is sought and must have resided in Montana for at least 9 months of that period.

History: En. Sec. 2, Ch. 584, L. 1981.

15-30-173. Residential property tax credit for elderly — disallowance or adjustment of certain claims. (1) A claim is disallowed if the department finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under 15-30-171 through 15-30-179.

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount.

History: En. Sec. 3, Ch. 584, L. 1981.

15-30-174. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) In the event that an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

History: En. Sec. 4, Ch. 584, L. 1981.

15-30-175. Residential property tax credit for elderly — form of relief. Relief under 15-30-171 through 15-30-179 is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess shall be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter.

History: **En. Sec. 5, Ch. 584, L. 1981.**

15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax paid less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax paid on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax paid and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0
2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income
9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the household income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the household income

(5) In no case may the credit granted exceed $400.

History: **En. Sec. 6, Ch. 584, L. 1981; amd. Sec. 2, Ch. 134, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (3); in (5), increased the maximum credit from $150 to $400.

15-30-177. Residential property tax credit for elderly — limitations. (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) No claim for relief may be allowed for any portion of property taxes paid or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) No claim for relief may be allowed on rented lands or rented dwellings that are not subject to ad valorem taxation in Montana during the claim period.

History: En. Sec. 7, Ch. 584, L. 1981; amd. Sec. 3, Ch. 134, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3).

15-30-178. Residential property tax credit for elderly — proof of claim. A receipt showing property tax paid or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant must, at the request of the department, supply all additional information necessary to support his claim.

History: En. Sec. 8, Ch. 584, L. 1981.

15-30-179. Residential property tax credit for elderly — denial of claim. A person filing a false or fraudulent claim under the provisions of 15-30-171 through 15-30-179 shall be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt shall bear interest from the date of the original payment of claim until paid, at the rate of 1% per month.

History: En. Sec. 9, Ch. 584, L. 1981.

Part 2

Withholding and Estimated Tax

15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for such service, the term "employer" means the person having control of the payment of such wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business;

(ii) such individual was regularly employed (as determined under subsection (4)(d)(i)) by such employer in the performance of such service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d).

(k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

History: En. Sec. 1, Ch. 246, L. 1955; amd. Sec. 185, Ch. 516, L. 1973; R.C.M. 1947, 84-4942(part); amd. Sec. 20, Ch. 581, L. 1979; amd. Sec. 1, Ch. 128, L. 1983; amd. Sec. 2, Ch. 634, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 128, in (4)(a), inserted "regular" before "armed forces" and inserted ", as defined in 10 U.S.C. 101(33)"; and inserted (4)(j).

Chapter 634 inserted (4)(k).

Chapter 634 — Contingent Termination: Chapter 634 inserted (4)(k).

Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation."

15-30-202. Withholding of tax from wages. Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the department. Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d) shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957; amd. Sec. 186, Ch. 516, L. 1973; R.C.M. 1947, 84-4943; amd. Sec. 2, Ch. 128, L. 1983.

Compiler's Comments

1983 Amendment: Near middle, inserted "regular" before "armed forces"; following "United States" inserted "as defined in 10 U.S.C. 101(33) and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d)".

Cross-References

Return required and withholding credited against taxes due on return, 15-30-142.

Employer to provide employee with statement of deductions, 39-3-101.

15-30-203. Employer liable for withholding. (1) Every employer shall be liable for the amounts hereinbefore required to be deducted and withheld, and such amounts plus interest due thereon shall be considered as a tax, and with respect thereto the employer shall be considered a taxpayer.

(2) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay over to the state amounts withheld from the corporation's employees and who willfully fails to pay over the withholdings is liable to the state for amounts so withheld and the amount of penalty and interest due thereon.

(3) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and thereafter the tax against which such deducted and withheld amounts would have been credited is paid, the amounts so required to be deducted and withheld shall not be collected from the employer.

History: En. Sec. 4, Ch. 246, L. 1955; R.C.M. 1947, 84-4945; amd. Sec. 1, Ch. 681, L. 1979.

15-30-204. Quarterly payment. (1) On or before the last day of the months of April, July, October, and January of each calendar year, every employer subject to the provisions of 15-30-202 and 15-30-203 shall file a return in such form and containing such information as may be required by the department and shall pay therewith the amount required by 15-30-202 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of 3 months.

(2) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than $10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding subsection, but in lieu thereof such employer shall, on or before February 15 of the year succeeding that in which such wages

were paid, file an annual return in such form as may be required by the department and shall pay therewith the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(3) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973; R.C.M. 1947, 84-4946.

15-30-205. Amount withheld considered as tax collected. All amounts deducted and withheld shall be considered as a tax collected under the provisions of 15-30-201 through 15-30-209, and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid to the state in compliance or intended compliance with 15-30-201 through 15-30-209.

History: En. Sec. 6, Ch. 246, L. 1955; R.C.M. 1947, 84-4947; R.C.M. 1947, 84-4947.

15-30-206. Annual withholding statement. Every employer shall, prior to February 15 in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955; amd. Sec. 188, Ch. 516, L. 1973; R.C.M. 1947, 84-4948.

15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 15 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 15 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts.

History: En. Sec. 9, Ch. 246, L. 1955; amd. Sec. 189, Ch. 516, L. 1973; R.C.M. 1947, 84-4950; amd. Sec. 1, Ch. 36, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "wage and tax statement for each employee" for "statement"; inserted (3); and made minor changes in phraseology.

15-30-208. Withheld taxes held in trust for state — warrants to collect. (1) Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the same in trust for the state of Montana.

(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 10, Ch. 246, L. 1955; amd. Sec. 190, Ch. 516, L. 1973; R.C.M. 1947, 84-4951; amd. Sec. 10, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Divided the first sentence of the section into two sentences and renumbered them subsections (1) and (2); substituted "tax is not paid when due" for "tax is not paid within 60 days after the same becomes due" in the middle of subsection (2); substituted "the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for "the department shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in 15-30-311 with respect to warrants relating to unpaid income taxes" at the end of subsection (2).

15-30-209. Violations by employer — penalties and remedies. (1) If any employer shall fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through 15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of 15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

(2) All of the remedies available to the state for the administration, enforcement, and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208.

History: (1)En. Sec. 13, Ch. 246, L. 1955; Sec. 84-4954, R.C.M. 1947; (2)En. Sec. 14, Ch. 246, L. 1955; amd. Sec. 191, Ch. 516, L. 1973; Sec. 84-4955, R.C.M. 1947; R.C.M. 1947, 84-4954, 84-4955(part).

Cross-References

Administration and collection of income taxes, Title 15, ch. 30, part 3.

15-30-210 through 15-30-220 reserved.

15-30-221 through 15-30-227. Repealed. Sec. 3, Ch. 570, L. 1981.

Compiler's Comments

Histories for Repealed Sections:

15-30-221. (1) thru (3)En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961; amd. Sec. 159, Ch. 516, L. 1973; Sec. 84-4903.2, R.C.M. 1947; (4)En. Sec. 3, Ch. 208, L. 1959; Sec. 84-4903.3, R.C.M. 1947; R.C.M. 1947, 84-4903.2, 84-4903.3; amd. Sec. 21, Ch. 581, L. 1979.

15-30-222. (1)En. Sec. 4, Ch. 208, L. 1959; Sec. 84-4903.4, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969; amd. Sec. 160, Ch. 516, L. 1973; Sec. 84-4903.5, R.C.M. 1947; R.C.M. 1947, 84-4903.4, 84-4903.5.

15-30-223. En. Sec. 6, Ch. 208, L. 1959; amd. Sec. 161, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.6.

15-30-224. En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961; amd. Sec. 162, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.7.

15-30-225. En. Sec. 8, Ch. 208, L. 1959; amd. Sec. 163, Ch. 516, L. 1973; amd. Sec. 4, Ch. 34, L. 1977; R.C.M. 1947, 84-4903.8.

15-30-226. En. Sec. 9, Ch. 208, L. 1959; amd. Sec. 164, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.9; amd. Sec. 11, Ch. 439, L. 1981.

15-30-227. En. Sec. 10, Ch. 208, L. 1959; amd. Sec. 165, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.10.

15-30-228. Nonresident ad valorem taxpayers — list — duty of department. It shall be the duty of the department or its agent in every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in the county as shown on the current assessment roll and forward such list to the department after the completion of the roll on the second Monday in July, but not later than September 30 of each year.

History: **En. Sec. 11, Ch. 208, L. 1959; amd. Sec. 100, Ch. 405, L. 1973; R.C.M. 1947, 84-4903.11.**

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-30-229 through 15-30-240 reserved.

15-30-241. Declaration of estimated tax. (1) Every individual except farmers, ranchers, or stockmen shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year if his net income from sources other than wages, salaries, bonuses, or other emoluments can reasonably be expected to equal or exceed his net income from wages, salaries, bonuses or other emoluments, which are subject to withholding.

(2) In the declaration required under subsection (1) of this section, the individual shall state:

(a) the amount which he estimates as the amount of tax under 15-30-103 for the taxable year;

(b) the amount which he estimates will be withheld from wages paid by his employer if said individual is an employee;

(c) the excess of the amount estimated under subsection (2)(a) over the amount estimated under subsection (2)(b), which excess for purposes of this section shall be considered the estimated tax for the taxable year;

(d) such other information as may be prescribed in rules promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April 15 of the taxable year, except that if the requirements of subsection (1) of this section are first met:

(a) after April 1 and before October 1 of the taxable year, the declaration shall be filed on or before October 15 of the taxable year;

(b) after October 1 of the taxable year, the declaration shall be filed on or before February 15 of the succeeding taxable year.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules prescribed by the department.

(5) If, on or before February 15 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on his return as payable, then under rules prescribed by the department:

(a) if the declaration is not required to be filed during the taxable year but is required to be filed on or before such February 15, such return shall for the purposes of this section be considered as such declaration; and

(b) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof, such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February 15.

(6) The department shall promulgate rules governing reasonable extensions of time for filing declarations and paying the estimated tax except in the case of taxpayers who are abroad, and no such extension shall be for more than 6 months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(8) Any individual who fails to file a declaration of estimated tax as required by this section is not subject to the penalties set forth in 15-30-321.

History: En. 84-4939 by Sec. 12, Ch. 260, L. 1955; amd. Sec. 183, Ch. 516, L. 1973; amd. Sec. 1, Ch. 374, L. 1977; R.C.M. 1947, 84-4939(part).

Cross-References

Return required and estimated tax credited against taxes due, 15-30-142.

15-30-242. Installment payments of estimated tax. (1) Estimated tax provided for in 15-30-241 shall be paid as follows:

(a) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of filing of the declaration and the second or last installment shall be paid on October 15 of the taxable year.

(b) If the declaration is filed after April 15 and not after October 15 of the taxable year and is not required by 15-30-241(3) to be filed on or before April 15 of the taxable year, the estimated tax shall be paid at the time of filing of the declaration.

(c) If the declaration is filed after October 15 of the taxable year and is not required by 15-30-241(3) to be filed on or before October 15 of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(d) If the declaration is filed after the time prescribed in 15-30-241, including cases where extensions of time have been granted, subsections (1)(b) and (1)(c) of this section shall not apply and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in 15-30-241(3) and the remaining installments shall be paid at the times at which and in the amounts in which they would have been payable if the declaration had been so filed.

(2) If any amendment of a declaration is filed after April 15 and before October 15 of the taxable year, the remaining installment, if any, shall be

ratably increased or decreased, as the case may be, to reflect the respective increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after October 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(3) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(4) Payment of the estimated tax or any installment thereof shall be considered payment on account of the tax for the taxable year.

(5) The application of this section to taxable years of less than 12 months shall be as prescribed in the rules promulgated by the department.

(6) In the application of this section to taxpayers reporting income on a fiscal-year basis, there shall be substituted for the dates specified therein the months corresponding thereto.

(7) An individual who fails to pay an estimated tax as required by this section is not subject to the penalties set forth in 15-30-321.

History: En. 84-4940 by Sec. 13, Ch. 260, L. 1955; amd. Sec. 184, Ch. 516, L. 1973; amd. Sec. 2, Ch. 374, L. 1977; R.C.M. 1947, 84-4940(part).

Part 3

Administration and Collection

15-30-301. Information agents' duties. (1) Every information agent shall make return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) interest, other than that specified in subsection (1)(a) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer.

(2) The return should be made under the regulations and in the form and manner prescribed by the department; provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; re-en. Sec. 2295.13, R.C.M. 1935; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967; amd. Sec. 170, Ch. 516, L. 1973; R.C.M. 1947, 84-4913.

Cross-References

Annual statement by employer sufficient for compliance, 15-30-207.

15-30-302. Oaths administered by director of revenue and designated employees. The director and each employee designated by him may administer an oath to any person or take the acknowledgment of any person in respect to any report or return required by or pursuant to this chapter or by the rules of the department.

History: En. Sec. 21, Ch. 181, L. 1933; re-en. Sec. 2295.21, R.C.M. 1935; amd. Sec. 101(a), Ch. 405, L. 1973; R.C.M. 1947, 84-4921.

15-30-303. Confidentiality of tax records. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of

income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish to the division of motor vehicles of the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling said division to administer the provisions of 61-5-105.

History: **En. Sec. 30, Ch. 181, L. 1933; re-en. Sec. 2295.30, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967; amd. Sec. 180, Ch. 516, L. 1973; amd. Sec. 1, Ch. 346, L. 1977; R.C.M. 1947, 84-4931.**

15-30-304. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall report such change or correction to the department within 90 days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the department within 90 days thereafter. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all such forms to the taxpayer after they have been examined by the department.

History: **En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973; R.C.M. 1947, 84-4938.**

Cross-References

Suspension of Statute of Limitations for failure to notify Department of change in federal return, 15-30-146.

15-30-305. Department rules. The department is hereby authorized to make such rules and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this chapter.

History: **En. Sec. 29, Ch. 181, L. 1933; re-en. Sec. 2295.29, R.C.M. 1935; amd. Sec. 179, Ch. 516, L. 1973; R.C.M. 1947, 84-4930.**

15-30-306. Agreements with contiguous states. The department of revenue may, in its discretion, enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by this chapter on income derived by persons who are nonresidents of this state is not payable when such other state or states agree to grant similar treatment to residents of Montana.

History: **En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(18).**

15-30-307. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: **En. 84-4959 by Sec. 2, Ch. 353, L. 1977; R.C.M. 1947, 84-4959.**

15-30-308 through 15-30-310 reserved.

15-30-311. Warrant for distraint. If any tax imposed by this chapter or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: **En. Sec. 26, Ch. 181, L. 1933; re-en. Sec. 2295.26, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1947; amd. Sec. 176, Ch. 516, L. 1973; R.C.M. 1947, 84-4928; amd. Sec. 1, Ch. 167, L. 1979; amd. Sec. 12, Ch. 439, L. 1981; amd. Sec. 1, Ch. 570, L. 1981.**

Compiler's Comments

1981 Amendments: Both Ch. 439 and Ch. 570 deleted the exception in (1) that taxes imposed by 15-30-221 through 15-30-228 are not subject to this section.

Chapter 439 also substituted "any portion of such tax is not paid when due" for "any portion of such tax is not paid within 60 days after the same becomes due"; substituted "the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for a procedure where the department was required to issue a warrant directed to the sheriff to levy upon and sell the property of the taxpayer; deleted subsections (2), (3), and (4), the text of which may be found in sec. 1, Ch. 167, L. 1979.

Cross-References

Warrant for withheld taxes, 15-30-208.

15-30-312. Jeopardy assessments. (1) If the department finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

(2) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once, including the issuance of a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: **En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967; amd. Sec. 177, Ch. 516, L. 1973; R.C.M. 1947, 84-4928.1; amd. Sec. 13, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Added "including the issuance of a warrant for distraint as provided in Title 15, chapter 1, part 7" to the end of (2).

Cross-References

Jeopardy assessment for withheld taxes, 15-30-204.

15-30-313. Soldiers' and sailors' relief. (1) The collection from any person in the military service, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than 6 months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service.

(2) No interest on any amount of tax, collection of which is deferred for any period under this section and 15-30-314, and no penalty for nonpayment of such amount during such period shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual for whom the collection of such tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

History: **En. Sec. 1, Ch. 181, L. 1943; amd. Sec. 5, Ch. 34, L. 1977; R.C.M. 1947, 84-4926.**

Cross-References

Special consideration allowed military personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-314. Stay of enforcement against military personnel. (1) Any such person may, during his period of military service or within 6 months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by such person prior to his period of military service or in respect of any such obligation or liability, whether falling due prior to or during his period of military service. Any district court of the state after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant a stay of the enforcement thereof during the applicant's period of military service and from the date of termination of such period of military service or from the date of application, if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or from the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such tax obligation or tax liability or assessment if paid when due and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability, or assessment in respect of which such stay was granted.

History: **En. Sec. 2, Ch. 181, L. 1943; R.C.M. 1947, 84-4927.**

Cross-References

Special consideration allowed military personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-315. Repealed. Sec. 54, Ch. 439, L. 1981.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973; R.C.M. 1947, 84-4958.

15-30-316 through 15-30-320 reserved.

15-30-321. Penalties for violation of chapter. (1) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5% of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than $5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for the filing of a return), there shall be added to the tax a penalty of 10% of said tax, but not less than $5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof, but such additional amount shall in no case be less than $25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed $1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

History: En. Sec. 24, Ch. 181, L. 1933; re-en. Sec. 2295.24, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L. 1969; amd. Sec. 175, Ch. 516, L. 1973; amd. Sec. 1, Ch. 65, L. 1975; R.C.M. 1947, 84-4924; amd. Sec. 3, Ch. 648, L. 1979.

Cross-References
Penalties applicable to withholding requirements, 15-30-209.
Penalties applicable to estimated tax requirements, 15-30-241, 15-30-242.

15-30-322. Action by attorney general. Action may be brought in the name of the state at any time by the attorney general at the instance of the department to recover the amount of any taxes, penalties, and interest due under this chapter.

History: En. Sec. 27, Ch. 181, L. 1933; re-en. Sec. 2295.27, R.C.M. 1935; amd. Sec. 178, Ch. 516, L. 1973; R.C.M. 1947, 84-4929.

Cross-References
Limitation on commencement of actions, 15-30-145.

15-30-323. Penalty for deficiency. (1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there shall be added to the amount of the deficiency 5% thereof; provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subsection, the interest shall in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest thereon at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 3, Ch. 477, L. 1981.

Compiler's Comments
1981 Amendment: Increased the time period for payment from 30 to 60 days in (1).

15-30-324. Time limitations for prosecution. A prosecution for an offense under 15-30-321 must be commenced within 5 years after the offense is committed.

History: En. Sec. 4, Ch. 648, L. 1979.

15-30-325 through 15-30-330 reserved.

15-30-331. Certified copies of tax returns to taxpayer — fee. (1) Certified copies of returns filed for income tax under 15-30-144 may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of 50 cents for each page.

(2) All moneys collected under this section shall be required to reimburse the department for costs involved in the preparation of the copies. All such moneys collected shall go into the general fund.

(3) The provisions of this section shall apply to all returns on file and all returns to be filed hereafter.

History: (1)En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973; Sec. 84-732, R.C.M. 1947; (2)En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973; Sec. 84-734, R.C.M. 1947;

(3)En. Sec. 4, Ch. 187, L. 1965; Sec. 84-735, R.C.M. 1947; R.C.M. 1947, 84-732(part), 84-734(part), 84-735.

CHAPTER 31

CORPORATION LICENSE OR INCOME TAX

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Chapter Cross-References

Reservation of power to tax certain persons and property within land purchased by the United States under Art. I, sec. 8, par. 17, U.S. Const., 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to the United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property within land purchased by the United States for national forest purposes, 2-1-210.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

Income derived by municipality from property acquired for airport purposes exempt, 67-10-406.

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Income tax deduction for land sale to beginning farmers, 80-12-211.

Tax-exempt agricultural loan authority bonds, 80-12-305.

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Part 1

Corporation License Tax Rate and Return

15-31-101. Organizations subject to tax. (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705(6), engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to

the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

History: (1), (3)En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; Sec. 84-1501, R.C.M. 1947; (2)En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; Sec. 84-1504, R.C.M. 1947; (4)En. Secs. 1, 3, Ch. 23, L. 1971; Secs. 84-1501.6, 84-1501.7, R.C.M. 1947; R.C.M. 1947, 84-1501(part), 84-1501.6(part), 84-1501.7(part), 84-1504(part); amd. Sec. 2, Ch. 634, L. 1979; amd. Sec. 3, Ch. 664, L. 1979.

Cross-References

Election of small business corporation exemption, Title 15, ch. 31, part 2.

Express companies exempt from license taxes other than the tax imposed by Title 15, ch. 54, 15-54-105.

Taxation of corporations operating free-trade zone, 30-15-104.

Payment of taxes on change from a state to a national banking corporation, 32-1-363.

Taxes on banks that have ceased to do business, 32-1-509.

Reciprocal taxation of building and loan associations, 32-2-105.

Taxation of credit unions, Title 32, ch. 3, part 9.

Taxation of insurers preempted by state, 33-2-707.

Certificate required from Department prior to corporate dissolution, 35-1-928.

Certificate required from Department prior to withdrawal of foreign corporation, 35-1-1017.

Business trusts subject to tax, 35-5-205.

Certificate required from Department prior to reinstatement of dissolved corporation, 35-6-104.

15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there shall not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of such corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(2) In determining the license fee to be paid under this part, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 shall be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part); amd. Sec. 1, Ch. 267, L. 1979; amd. Sec. 1, Ch. 284, L. 1979; amd. Sec. 1, Ch. 537, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (1)(l).

Cross-References

Small business corporation exemption, Title 15, ch. 31, part 2.

Farm mutual insurers subject only to certain taxes, 33-4-409.

Fraternal benefit societies exemption, 33-7-407.
Insurance guaranty association exemptions, 33-10-107.
Life and health insurance guaranty association, 33-10-208.
Exemption of rural electric and telephone cooperatives, 35-18-503.
Exemption for water users' association, 85-6-108.

15-31-103 through 15-31-110 reserved.

15-31-111. Return to be filed. (1) Every corporation subject to the license fee imposed under this chapter shall for each taxable period render a true and accurate return of its net income for the taxable period in the manner and form to be prescribed by the department of revenue and containing such facts, data, and information as are appropriate and in the opinion of the department necessary to determine the correctness of the net income returned and to carry out the provisions of this chapter. The return shall be signed by one of the following: the president, the vice-president, the treasurer, the assistant treasurer or chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return shall be filed with the department on or before May 15 following the close of the calendar year, and if reporting on a fiscal year basis, the return shall be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year. Upon application, a corporation shall be allowed an automatic extension of time for filing its return of 1 to 6 months following the date prescribed for filing of its tax return. The application is to be made on such forms as the department shall prescribe.

(3) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this chapter, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders.

History: **En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(part).**

Cross-References

Certified copies of return available, 15-31-551.
Taxpayer to make return available to determine amount of special payment for relocation caused by highway land acquisition, 60-4-304.

15-31-112. Taxable period. The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes. In the event a corporation changes its taxable year, it shall promptly notify the department of revenue.

History: **En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961;**

amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(1).

15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) No corporation is exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(part); amd. Sec. 2, Ch. 483, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsections (1)(a) for "but shall include" at the end of subsection (1); inserted subsections (1)(a)(ii) and (1)(b).

Cross-References

Railroad rehabilitation revenue bonds exemption, 60-11-1110.

Rolling stock revenue bonds exemption, 60-11-1210.

Payment received under Title 70, ch. 31, for relocation because of federally assisted program not income, 70-31-106.

Conservancy district bonds exemption, 85-9-626.

Board of Housing bonds exemption, 90-6-125.

15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or

in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) Light vehicle license fees, as provided by 61-3-532, paid within the year.

(7) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(8) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(9) In lieu of the deduction allowed under subsection (8), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (9).

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R.C.M. 1921; amd. Sec. 2, Ch. 166, L. 1933; re-en. Sec. 2297, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; amd. Sec. 1, Ch. 358, L. 1971; amd. Sec. 1, Ch. 320, L. 1973; amd. Sec. 54, Ch. 516, L. 1973; amd. Sec. 1, Ch. 54, L. 1974; amd. Sec. 3, Ch. 405, L. 1977; amd. Sec. 4, Ch. 576, L. 1977; R.C.M. 1947, 84-1502; amd. Sec. 3, Ch. 634, L. 1979; amd. Sec. 1, Ch. 574, L. 1981; amd. Sec. 21, Ch. 614, L. 1981; amd. Sec. 1, Ch. 447, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (9).

1981 Amendments: Chapter 574 added subsection (8).

Chapter 614 added subsection (6).

Cross-References

Deduction for energy-conserving investments, 15-32-103.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.

History: En. Sec. 3, Ch. 673, L. 1983.

Compiler's Comments

Retroactive Effect: Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Sections 1 and 3 of this act [codified to 15-31-115 and 15-31-116] apply retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law."

15-31-116. Reduction of deductions related to excluded income. (1) A corporation, taxable under this part, that excludes interest from gross income which would be taxable except for federal law must adjust its allowable deductions for all taxable periods for which interest is excluded in the following manner:

(a) the total amount of interest excluded from gross income by federal law must be determined;

(b) the total amount of all interest income from all sources must be determined;

(c) the ratio of excluded interest income to all interest income must be determined; and

(d) the total deductions allowable under 15-31-114 must be reduced by an amount determined by multiplying the amount of deduction otherwise allowable by the ratio of excluded interest to all interest income; however, the product of this calculation may not exceed the amount of excluded interest income.

(2) Allowable deductions must be reduced with respect to all corporations that exclude interest income otherwise taxable upon returns filed for all taxable periods for which such exclusion is claimed and for all taxable periods for which a claim for refund is made.

History: **En. Sec. 1, Ch. 673, L. 1983.**

Compiler's Comments

Retroactive Effect: Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Sections 1 and 3 of this act [codified to 15-31-115 and 15-31-116] apply retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law."

15-31-117 through 15-31-120 reserved.

15-31-121. Rate of tax — minimum tax. (1) The percentage of net income to be paid under 15-31-101 shall be 6 ¾ % of all net income for the taxable period. The rate set forth in this part shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

History: **En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part).**

Cross-References

Investment credit, 15-31-123.

New or expanded industry credit, 15-31-124.

Tax credit for loans by certain public utilities and financial institutions for energy-saving purposes, 15-32-107.

Credit for public contractor's license fee, 15-50-207.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-31-122. Alternative gross sales tax. Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay a tax of ½ of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under 15-31-101 and

15-31-121. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part).

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-31-123. Investment credit. (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that does not have:

(a) more than 10 shareholders;

(b) a person who is not an individual (other than an estate or other than a trust described in 15-31-207) as a shareholder;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana income.

(4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed $500.

(6) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended.

History: En. 84-4960, 84-4961 by Secs. 1, 2, Ch. 412, L. 1977; R.C.M. 1947, 84-4960, 84-4961(part); amd. Sec. 3, Ch. 111, L. 1979; amd. Sec. 3, Ch. 520, L. 1981; amd. Sec. 2, Ch. 704, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (2), after "that" deleted "is eligible to elect to be taxed under the provisions of 15-31-202, whether or not such election is made.", and inserted "does not have"; inserted (2)(a) through (2)(d); inserted last two sentences of (3) relating to section 46(a)(2)(F) of the IRC of 1954 and to certain qualified property defined by section 38 of the IRC of 1954; inserted (3)(a) and (3)(b); at end of (4) after "year is" deleted "the sum of"; reduced percentage of federal credit from 30% to 5%; deleted former (4)(b) and (4)(c), which read: "(b) the investment credit carryovers carried to the taxable year as provided in subsection (6); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (6)."; in (5) after "may not exceed" deleted "the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000.", and inserted "$500"; and in (6) substituted existing language for former text, which read: "If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (5), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended."

Section 4, Ch. 704, L. 1983, made the amendments applicable to taxable years beginning after Dec. 31, 1982.

1981 Amendment: Clarified who may take the investment credit under this section by deleting individuals, estates, and trusts. Individuals, estates, and trusts are eligible for the investment credit under 15-30-162; increased the amount of the investment credit from 20% of the federal credit to 30% of the federal credit; and made minor changes in phraseology.

Cross-References

Individual investment credit, 15-30-162.

15-31-124. New or expanded industry credit — definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(4) "New corporation" means a corporation engaging in manufacturing for the first time in this state and manufacturing a product not currently manufactured or substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state; it does not include reorganizing an existing corporation in this state or the creation of a parent, subsidiary, or affiliate of which 50% or more is owned or controlled by the same person, corporation, or association.

History: En. 84-1520 by Sec. 2, Ch. 435, L. 1975; R.C.M. 1947, 84-1520.

15-31-125. Determination of tax credit. A new or expanding manufacturing corporation may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: the first 3 years of operation of a new corporation or the first 3 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201 may be allowed.

In determining total wages for an expanding corporation, only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to determine eligibility for the credit.

History: **En. 84-1523 by Sec. 3, Ch. 435, L. 1975; R.C.M. 1947, 84-1523.**

15-31-126. Limitation. This credit is available only to those new and expanding corporations that provide jobs within the state of Montana.

History: **En. 84-1525 by Sec. 5, Ch. 435, L. 1975; R.C.M. 1947, 84-1525.**

15-31-127. Department duties. The department shall determine the eligibility of a corporation for this credit, promulgate rules, prepare forms, maintain records, and perform other duties necessary to carry out 15-31-124 through 15-31-127.

History: **En. 84-1524 by Sec. 4, Ch. 435, L. 1975; R.C.M. 1947, 84-1524.**

15-31-128 through 15-31-140 reserved.

15-31-141. Consolidated returns — computation and procedure — prohibition on financial institutions. (1) Corporations which are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the department of revenue. For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

(3) If the conditions of subsections (1) and (2) of this section are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(4) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the department that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets, or the entire net income earned from business

done in this state, the department is authorized and empowered to equitably adjust the tax in such manner as it may determine.

(5) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(b) In accordance with subsection (5)(a), financial institutions are prohibited from filing consolidated returns under this section.

History: En. Sec. 5, Ch. 166, L. 1933; re-en. Sec. 2303.1, R.C.M. 1935; amd. Sec. 1, Ch. 243, L. 1969; amd. Sec. 62, Ch. 516, L. 1973; R.C.M. 1947, 84-1509; (5)En. Sec. 2, Ch. 673, L. 1983.

Compiler's Comments

Applicability of Subsection (5): Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Section 2 of this act [codified as 15-31-141(5)] applies to taxable periods beginning after December 31, 1982."

15-31-142. Reports upon merger of corporations. If any corporation shall acquire, either directly, indirectly, or by merger or consolidation, the major portion of the actively employed assets of another corporation or of corporations doing any business in this state during any year or shall merge or consolidate another corporation, it shall within 30 days after such acquisition, merger, or consolidation file a report and include therein a statement showing its own and the consolidated entire net income of all such corporations for preceding calendar or fiscal years to the extent that all such income has not been used or included in measuring a corporation excise tax to this state. It shall, in any event, be liable for and pay all taxes that would have been due and payable by the corporation or corporations on or before the first day of January next succeeding had the corporation or corporations whose assets were acquired or which were merged or consolidated continued in business and as though there had been no interruption or change of the business thereof or discontinuance of the privilege of doing business. It shall also include in its own next annual return, in addition to its own entire net income, so much of the entire net income of corporations whose assets it acquired or which were merged or consolidated as shall not have been used or included in measuring a corporation excise tax to this state and shall be taxed upon such combined entire net income for the year to ensue.

History: En. Sec. 6, Ch. 166, L. 1933; re-en. Sec. 2303.2, R.C.M. 1935; R.C.M. 1947, 84-1510.

15-31-143. Return and payment on corporate dissolution. (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year shall, before such dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in 15-31-121 and 15-31-122, in addition to all other corporation license taxes for which such corporation may then be liable.

History: En. Sec. 7, Ch. 166, L. 1933; re-en. Sec. 2303.3, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1943; amd. Sec. 1, Ch. 60, L. 1963; R.C.M. 1947, 84-1511.

Part 2

Small Business Corporations

Part Cross-References

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-31-201. Definitions. (1) For purposes of this part, the term "small business corporation" means a corporation doing business in Montana and which has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter has filed a copy thereof with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective.

(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under Subchapter S in effect for such taxable year and has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(a), (b); amd. Sec. 1, Ch. 667, L. 1983.

Compiler's Comments

1983 Amendment: In (1) substituted "has made a valid ... to become effective" for "does not have:

(a) more than 10 shareholders;

(b) as a shareholder a person (other than an estate and other than a trust described in 15-31-207) who is not an individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock"; and in (2) substituted "under Subchapter S" for "under this part" and inserted at end the requirement of filing a copy of the election.

15-31-202. Election by small business corporation. (1) A small business corporation may elect not to be subject to the taxes imposed by this chapter.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation is not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such shareholder.

(3) An election under subsection (1) must be made in accordance with rules prescribed by the department of revenue.

(4) This election is not effective unless the corporate net income or loss of such electing corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

(5) Every electing corporation is required to pay the minimum fee of $10 required by 15-31-204.

History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973; amd. Sec. 1, Ch. 34, L. 1977; amd. Sec. 2, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.2; amd. Sec. 22, Ch. 581, L. 1979; amd. Sec. 2, Ch. 667, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted present language for: "(1) Except as provided in subsection (6), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if consented to by all persons who are shareholders in such corporation. The election is effective:

(a) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

(b) on the day on which the election is made, if the election is made after such first day"; in (3) deleted "An election under subsection (1) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month."; and deleted (4) through (6), which related to the effective period of an election, termination of an election when certain shareholders refuse to consent to it, revocation of an election, the effective period of a revocation, termination of an election for subsequent failure to meet the definition of a small business, and when the next election may be held after termination or revocation of an election.

Cross-References

Adjusted gross income when corporation elects under federal law but not state, 15-30-111.

15-31-203. Small business option unavailable on dissolution — exception. In the case of corporation dissolution, no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

History: En. Sec. 2, Ch. 60, L. 1963; R.C.M. 1947, 84-1501.3.

15-31-204. Minimum fee of qualifying corporations unaffected. Notwithstanding the provisions of 15-31-121 corporations electing and qualifying under 15-31-202 shall pay a minimum fee of $10.

History: En. Sec. 2, Ch. 11, Ex. L. 1969; R.C.M. 1947, 84-1501.5.

15-31-205. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(c).

15-31-206. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(d).

15-31-207. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(e).

15-31-208. Failure to file — disqualification. If a corporation does not file a copy of the federal Subchapter S election on or before the 15th day of the third month of the taxable year, the corporation shall not qualify as a small business corporation under this part for the taxable year.

History: En. Sec. 3, Ch. 667, L. 1983.

15-31-209. Termination and revocation. If the election under the provisions of Subchapter S is either terminated or revoked for federal purposes, the corporation must notify the department within 30 days of such termination or revocation. The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of Subchapter S of the Internal Revenue Code of 1954.

History: En. Sec. 4, Ch. 667, L. 1983.

Part 3

Allocation and Apportionment of Income

15-31-301. Corporations subject to allocation and apportionment. (1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this part.

(2) A corporation engaged in a unitary business within and without Montana must apportion its business income as provided for under 15-31-305. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent businesses.

(3) A corporation not engaged in a unitary business must allocate its business income by means of separate accounting methods, provided its books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit such proper segregation, its business income must be apportioned according to the provisions of 15-31-305.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(1).

15-31-302. Definitions. (1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Nonbusiness income" means all income other than business income.

(3) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(5) "Sales" means all gross receipts of the taxpayer not allocated under 15-31-304.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(2).

15-31-303. When taxable in another state. For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(1) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state does or does not.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(3).

15-31-304. Allocation of nonbusiness income. (1) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (2) through (5) of this section.

(2) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:

(i) the patent or copyright is utilized by the payer in this state; or

(ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(4) thru (8).

15-31-305. Apportionment of business income. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(9).

15-31-306. Definition of property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(10).

15-31-307. Values used for property factor. (1) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(2) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(11), (12).

15-31-308. Definition of payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(13).

15-31-309. Payroll factor for compensation in this state. Compensation is paid in this state if:

(1) the individual's service is performed entirely within the state;

(2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) some of the service is performed in the state and:

(a) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(b) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(14).

15-31-310. Definition of sales factor. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(15).

15-31-311. Sales factor for sales in this state. (1) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(2) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(16), (17).

15-31-312. Apportionment formula — relief provisions. If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting, provided the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this part, a "unitary business" is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses.

(2) the exclusions of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(18).

15-31-313. Rules. The department of revenue shall prescribe regulations to carry out this part and shall publish such regulations and amendments thereto.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(19).

Part 4

Corporation Income Tax

Part Cross-References

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

15-31-401. Application of license and income taxes. It is the intent of the legislature that the corporation license tax shall be applied to all corporations subject to taxation under part 1 of this chapter. The income tax provided by this part shall be applied to corporations that are not taxable under part 1 of this chapter but are taxable under an income tax.

History: En. Sec. 1, Ch. 82, L. 1971; R.C.M. 1947, 84-6901.

15-31-402. Short title — administration of part. This part shall be known as and may be cited as the "Corporation Income Tax", and it shall be administered by the department of revenue.

History: En. Sec. 2, Ch. 82, L. 1971; amd. Sec. 255, Ch. 516, L. 1973; R.C.M. 1947, 84-6902.

15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax. (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 15-31-121 and 15-31-122 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under part 1 of this chapter, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, but does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(3) Pursuant to Article III, section 2, of the Multistate Tax Compact, any corporation required to file a return under this part and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed $100,000 may elect to pay a tax of ½ of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 82, L. 1971; amd. Sec. 1, Ch. 367, L. 1973; amd. Sec. 1, Ch. 247, L. 1977; R.C.M. 1947, 84-6903.

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-31-404. Offset for license taxes — income tax collected considered license tax. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under parts 1 through 3 and 5 of this chapter. In the event that taxes, interest, and penalties have been or will be assessed against, paid by, or collected from a corporation under this part, which assessment, payment, or collection should have been made under parts 1 through 3 and 5 of this chapter, such taxes, interest, and penalties shall be considered as having been assessed, paid, or collected under parts 1 through 3 and 5 as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971; R.C.M. 1947, 84-6904.

15-31-405. Information return — period for assessment of tax. When a corporation formerly subject to tax under part 1 of this chapter becomes subject to tax under this part, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under parts 1 through 3 and 5 and not under this part. For years subsequent to the year in which the change occurs, the tax will be assessed under this part.

History: En. Sec. 5, Ch. 82, L. 1971; R.C.M. 1947, 84-6905.

15-31-406. License tax sections incorporated by reference. The provisions of the following sections of this chapter are incorporated into this part by reference and made a part hereof:

(1) that part of 15-31-101 which defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income shall not be taxed;

(2) sections 15-31-111 through 15-31-114; 15-31-141, 15-31-142; 15-31-301 through 15-31-313; 15-31-501 through 15-31-509; 15-31-525, 15-31-526; 15-31-531, 15-31-532; and 15-31-541 through 15-31-543, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there shall be substituted the words "income tax".

History: En. Sec. 6, Ch. 82, L. 1971; R.C.M. 1947, 84-6906; amd. Sec. 14, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "15-31-525, 15-31-526" for "15-31-525 through 15-31-527" in (2).

15-31-407. Employment of personnel — rules. The department of revenue may employ personnel and adopt rules and forms as the department finds necessary to place this part in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971; amd. Sec. 258, Ch. 516, L. 1973; R.C.M. 1947, 84-6907.

15-31-408. Disposition of revenue. The net revenue from the tax imposed by this part shall be disposed of in the same manner as revenue from the corporation license tax as provided in 15-1-501.

History: En. Sec. 8, Ch. 82, L. 1971; R.C.M. 1947, 84-6908.

Part 5

Administration and Collection

15-31-501. Department rules. The department of revenue shall have power to prescribe forms for returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this chapter.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R.C.M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; re-en. Sec. 2303, R.C.M. 1935; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973; R.C.M. 1947, 84-1508(part).

15-31-502. Assessment and payment of tax, penalty, and interest. All taxpayers shall compute the amount of tax payable under this chapter and shall remit such amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of 12% per annum from the due date until paid.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(1); amd. Sec. 4, Ch. 634, L. 1979; amd. Sec. 1, Ch. 182, L. 1981.

Compiler's Comments

1981 Amendment: Increased the interest on delinquent corporate license tax from 9% to 12%.

15-31-503. Deficiency assessment — hearing — interest. (1) If the department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after the mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in 15-31-502 for payment of the tax. A certificate by the department of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(a).

Cross-References

Deficiency assessment of banks and savings and loan institutions, 15-31-701.

15-31-504. Estimated tax on failure to file. (1) If any taxpayer fails to make return as herein required, the department of revenue is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, the department shall also have power to

examine or to cause to have examined by any agent or representative designated by it for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises and may take testimony and require proof material for its information.

History: En. Sec. 13, Ch. 166, L. 1933; re-en. Sec. 2303.9, R.C.M. 1935; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973; R.C.M. 1947, 84-1517(1), (2).

15-31-505. Subpoenas — investigation of income, and shifting. (1) Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana in and for the county of Lewis and Clark to compel attendance of witnesses to testify before the department of revenue, together with the production of books and such other testimony by appropriate process.

(2) When the department has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R.C.M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; re-en. Sec. 2303, R.C.M. 1935; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973; R.C.M. 1947, 84-1508(part).

15-31-506. Copy of federal return required — report of amended federal return. Every corporation shall, upon request of the department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the department may specify in its request. If the amount of a corporation's taxable income reported on its federal income tax return or the computation schedule filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the department within 90 days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the department within 90 days thereafter.

History: En. Sec. 13, Ch. 166, L. 1933; re-en. Sec. 2303.9, R.C.M. 1935; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973; R.C.M. 1947, 84-1517(3).

15-31-507. Returns confidential. When the assessment shall be made as provided in this chapter, the returns, together with any corrections thereof which may have been made by the department of revenue, shall be filed in the office of said department and shall constitute public records and be open to inspection as such only upon the order of the governor and under rules to be prescribed by the department.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R.C.M. 1921; amd. Sec. 3, Ch. 146, L. 1923; re-en. Sec. 2302, R.C.M. 1935; amd. Sec. 59, Ch. 516, L. 1973; R.C.M. 1947, 84-1507.

Cross-References

Lists of corporations not prohibited, 15-31-607.

Applicable to information furnished to the Department under resource indemnity tax, 15-38-109.

15-31-508. Reciprocity with other tax authorities. Notwithstanding the provisions of 15-31-507 as to secrecy, the department of revenue, under such rules as it may prescribe, may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on or according to income to inspect the returns of any taxpayer making returns under this chapter or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement, or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

History: En. Sec. 14, Ch. 166, L. 1933; re-en. Sec. 2303.10, R.C.M. 1935; amd. Sec. 68, Ch. 516, L. 1973; R.C.M. 1947, 84-1518.

15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in 15-31-544, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:

(i) only so long as the suspension of the federal statute of limitation; or

(ii) until 1 year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever

period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969; amd. Sec. 61, Ch. 516, L. 1973; amd. Sec. 1, Ch. 101, L. 1974; R.C.M. 1947, 84-1508.2; amd. Sec. 11, Ch. 79, L. 1983; amd. Sec. 2, Ch. 222, L. 1983.

Compiler's Comments

1983 Amendments: Chapters 79 and 222 both changed "15-31-542" to "15-31-544" near beginning of (1).

15-31-510 through 15-31-520 reserved.

15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any taxpayer relating to the liability of such taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-1526 by Sec. 1, Ch. 353, L. 1977; R.C.M. 1947, 84-1526; amd. Sec. 23, Ch. 581, L. 1979.

15-31-522. When immediate payment demanded. If the department of revenue finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

History: En. Sec. 1, Ch. 246, L. 1969; amd. Sec. 58, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.2.

15-31-523. Suspension or forfeiture on delinquency. (1) If a tax computed and levied hereunder is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation, it shall thereupon forfeit its rights to do intrastate business in this state. Provided that if any domestic corporation shall fail for a period of 5 consecutive years to either file a return or to pay the corporation license tax, the department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of 60 days from and after the mailing of such notice. If such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said 60-day period, the department shall certify this fact to the secretary of state, and upon receipt of such certificate, the corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

(2) The department shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture, or dissolution herein provided for shall become effective immediately when such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture, or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; re-en. Sec. 2303.6, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1947; amd. Sec. 64, Ch. 516, L. 1973; R.C.M. 1947, 84-1514; amd. Sec. 69, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "when" before "such record" in the last sentence.

15-31-524. Reviver of corporation after suspension or forfeiture. Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors; and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of $5. In case the application is made more than 1 year from the date the suspension or forfeiture occurred, the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred. Upon such payment, the secretary of state shall issue a certificate of reviver for which he shall collect a fee of $5 and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense, or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county clerk and recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; re-en. Sec. 2303.7, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967; amd. Sec. 65, Ch. 516, L. 1973; R.C.M. 1947, 84-1515.

15-31-525. Levy upon and sale of property. If any tax imposed by this chapter or any portion of such tax is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(2); amd. Sec. 15, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "tax is not paid when due" for "tax is not paid within 60 days after the same becomes due" near the beginning of the section; substituted "the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for a procedure that required the department to issue a warrant directly to the sheriff commanding him to levy and sell the property of the taxpayer.

Cross-References

Distribution of delinquent taxes of bank or savings and loan institution, 15-31-701.

15-31-526. Action by attorney general. Action may be brought by the attorney general of the state at the instance of the department, in the name of the state, to recover the amount of any taxes, penalties, and interest due under this chapter.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(3); amd. Sec. 12, Ch. 79, L. 1983.

Compiler's Comments

1983 Amendment: After "Action may be brought", deleted "at any time".

15-31-527. Repealed. Sec. 54, Ch. 439, L. 1981.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.1.

15-31-528 through 15-31-530 reserved.

15-31-531. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for, interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be

imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(part); amd. Sec. 2, Ch. 589, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due" for "interest shall be allowed on overpayments at the rate of 6% per annum" near the beginning of (2).

Cross-References

Interest not allowed on refund resulting from net operating loss carryback or carryover, 15-31-114.

Refund of tax overpaid by bank on savings and loan institution, 15-31-701.

15-31-532. Application for refund — appeal from denial. If the department of revenue disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of 30 days from the mailing of the notice, the department's action shall become final unless within the 30-day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(part).

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-31-533 through 15-31-540 reserved.

15-31-541. Site of failure to act — evidence. The failure to do any act required by or under the provisions of this chapter shall be deemed an act committed in the office of the department of revenue in Helena, Montana. The certificates of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this chapter shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933; re-en. Sec. 2303.4, R.C.M. 1935; amd. Sec. 63, Ch. 516, L. 1973; R.C.M. 1947, 84-1512.

15-31-542. Repealed. Sec. 18, Ch. 79, L. 1983.

History: En. Sec. 9, Ch. 166, L. 1933; re-en. Sec. 2303.5, R.C.M. 1935; R.C.M. 1947, 84-1513.

15-31-543. Penalties. (1) If any corporation shall refuse or neglect to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return, such corporation shall be liable to a penalty of not exceeding $5,000 and may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as such corporation until the license fee, together with all penalties and costs, shall be paid, which forfeiture may be enforced by the attorney general by proper proceedings in court.

(2) Every officer or employee of any corporation or other person who, without fraudulent intent, shall fail to make, render, sign, or verify any

return or to supply any information within the time required by or under the provisions of this chapter shall be liable to a penalty of not more than $100 to be imposed, assessed, and collected by the department of revenue in the same manner as is provided in this chapter with regard to delinquent taxes.

History: (1)En. Sec. 6, Ch. 79, L. 1917; re-en. Sec. 2301, R.C.M. 1921; re-en. Sec. 2301, R.C.M. 1935; Sec. 84-1506, R.C.M. 1947; (2)En. Sec. 12, Ch. 166, L. 1933; re-en. Sec. 2303.8, R.C.M. 1935; amd. Sec. 66, Ch. 516, L. 1973; Sec. 84-1516, R.C.M. 1947; R.C.M. 1947, 84-1506, 84-1516.

15-31-544. Action on false or fraudulent return. Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

History: En. Sec. 1, Ch. 408, L. 1981; amd. Sec. 1, Ch. 222, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (1), which read: "Except as provided in subsection (2), an action to collect a past-due tax imposed pursuant to this chapter or to enforce a provision of this chapter must be brought within 5 years of the due date of the tax or the date of filing the return, whichever is later."; near beginning, after "taxpayer" inserted "files a fraudulent return or"; and after "fails to file the return" substituted present remaining language for "an action to collect the tax may be brought at any time. Whenever a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department."

15-31-545 through 15-31-550 reserved.

15-31-551. Certified copies of corporation license tax returns to taxpayer — fee. Certified copies of returns filed for corporation license tax under 15-31-111 may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of 50 cents for each page.

History: En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973; R.C.M. 1947, 84-732(part).

15-31-552. Corporation license tax clearance certificates furnished — fee. Upon request of a corporation and upon the payment of $1, the department of revenue may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed, and that all information has been supplied as required by the provisions of this chapter.

History: En. Sec. 2, Ch. 187, L. 1965; amd. Sec. 21, Ch. 516, L. 1973; R.C.M. 1947, 84-733.

15-31-553. Fees to reimburse department for costs — deposit in general fund. All moneys collected under 15-31-551 and 15-31-552 shall be required to reimburse the department of revenue for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund.

History: En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973; R.C.M. 1947, 84-734.

15-31-554. Returns to which sections apply. The provisions of 15-31-551 through 15-31-553 shall apply to all returns on file and all returns to be filed hereafter.

History: En. Sec. 4, Ch. 187, L. 1965; R.C.M. 1947, 84-735.

Part 6

Lists of Corporations

15-31-601. Central reporting system for identification of corporations. It is the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and are subject to taxation by the state of Montana.

History: **En. Sec. 1, Ch. 469, L. 1973; R.C.M. 1947, 84-708.2; amd. Sec. 24, Ch. 581, L. 1979.**

15-31-602. Rules for central reporting system. The director of the department of revenue shall promulgate rules to accomplish the purposes of this part.

History: **En. Sec. 2, Ch. 469, L. 1973; R.C.M. 1947, 84-708.3.**

15-31-603. List of corporations furnished by secretary of state. The secretary of state shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 35, chapter 1, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department may require to administer the purposes of this part.

History: **En. Sec. 3, Ch. 469, L. 1973; R.C.M. 1947, 84-708.4.**

15-31-604. Labor department to furnish list of corporations. The commissioner of the department of labor and industry shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 39, chapter 51, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this part.

History: **En. Sec. 4, Ch. 469, L. 1973; R.C.M. 1947, 84-708.5.**

15-31-605. List of corporations compiled by department of revenue. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana to be filed in the central reporting system. The list must contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of this chapter.

History: **En. Sec. 5, Ch. 469, L. 1973; R.C.M. 1947, 84-708.6; amd. Sec. 25, Ch. 581, L. 1979.**

15-31-606. Cross-referencing of lists by department. The department of revenue shall maintain the lists referred to in 15-31-603, 15-31-604, and 15-31-605 in such a manner as to cross-reference the information contained in the lists for the purpose of determining whether corporations, foreign and domestic, have complied with the terms of this chapter, and the same list shall constitute a public record.

History: **En. Sec. 6, Ch. 469, L. 1973; R.C.M. 1947, 84-708.7.**

15-31-607. Nonapplicability of confidentiality provisions. The provisions of 15-31-507 shall not apply to the lists provided under the provisions of this part.

History: **En. Sec. 7, Ch. 469, L. 1973; R.C.M. 1947, 84-708.8.**

Part 7

Banks and Savings and Loan Associations

15-31-701. Department of revenue — special duties for transmitting corporation license tax revenues collected from banks or savings and loan associations to counties. (1) Within 30 days after receiving corporation license tax returns and payments from banks or savings and loan associations, the department of revenue shall transmit to the county treasurer of the county in which the business is located the revenues calculated under 15-31-702(1)(b).

(2) If the department of revenue determines, under the provisions of 15-31-503 and 15-31-531, that a bank or savings and loan association owes more taxes than shown on the original return or has paid more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan association. Additional payment is due within 10 days after receipt of the final determination of taxes due. County treasurers shall issue warrants for their portion of the overpayment received and interest, as provided in 15-31-531.

(3) The department shall continue to exercise all its duties and powers outlined in this title with respect to auditing returns and enforcing payment of the corporation license taxes owed by banks and savings and loan associations. Any delinquent taxes collected from the sale of property of a bank or savings and loan association under the provisions of 15-31-525 shall be transmitted to the county in which the corporation owing the delinquent taxes is located. The only duties of the county treasurers in this regard are issuing refunds and distributing the taxes to local taxing jurisdictions.

History: **En. Sec. 5, Ch. 634, L. 1979.**

15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes collected from banks and savings and loan associations shall be distributed in the following manner:

(a) 20% must be remitted to the state treasurer to be allocated as provided in 15-1-501(2); and

(b) 80% must be allocated to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes distributed under subsection (1)(b) shall be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions.

History: **En. Sec. 6, Ch. 634, L. 1979.**

Cross-References

Exempt from pledge to payment of long-range building program bonds, 17-5-408.

15-31-703. Moneyed capital and shares of banks exempt. (1) Moneyed capital and shares of banks are exempt from taxation.

(2) "Moneyed capital" means money, bonds, notes, and other evidence of indebtedness, including evidence of indebtedness secured by a mortgage on real or personal property, in the hands of individual citizens and corporations coming into competition with the business of national banks or employed in conducting a banking or investment business.

History: **En. Sec. 7, Ch. 634, L. 1979.**

CHAPTER 32

ENERGY-RELATED AND ECOLOGICAL TAX INCENTIVES

Part 1 — Investment in Energy Conservation or Alternative Energy

Section

15-32-101. Purpose.
15-32-102. Definitions.
15-32-103. Deduction for energy-conserving investments.
15-32-104. Limitations on deduction and credit.
15-32-105. Application to new construction — rules.
15-32-106. Procedure for obtaining benefit of deduction or credit.
15-32-107. Loans by utilities and financial institutions — tax credit for interest differential.
15-32-108. Extension of existing classifications.
15-32-109. Credit for energy-conserving expenditures.

Part 2 — Tax Credit for Installing Alternative Energy System

15-32-201. Amount of credit — to whom available.
15-32-202. Taxable years in which credit may be claimed — carry-over.
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Part 3 — Tax Deduction for Purchasing Montana Produced Organic Fertilizer

15-32-301. Purpose.
15-32-302. Definitions.
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Part 4 — Wind-Generated Electricity

15-32-401. Purpose and statement of policy.
15-32-402. Commercial investment credit — wind-generated electricity.
15-32-403. Limitation on credit.
15-32-404. Carryover of credit.
15-32-405. Exclusion from other tax incentives.
15-32-406. Separation of credit portion.
15-32-407. Rules authorized.

Chapter Cross-References

Property tax exemption for capital investment in a recognized nonfossil form of energy generation, 15-6-201.

Part 1

Investment in Energy Conservation or Alternative Energy

15-32-101. Purpose. The purpose of this part is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. This part allows but does not require a public utility to extend credit for energy conservation investments.

History: En. 84-7401 by Sec. 1, Ch. 548, L. 1975; amd. Sec. 7, Ch. 576, L. 1977; R.C.M. 1947, 84-7401.

15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(5) "Recognized nonfossil forms of energy generation" means a system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources, for the production of electric power from solid wood wastes, and also means a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area.

History: En. 84-7402 by Sec. 2, Ch. 548, L. 1975; R.C.M. 1947, 84-7402; amd. Sec. 1, Ch. 652, L. 1979.

15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
100% of first $1,000 expended	100% of first $2,000 expended
50% of next $1,000 expended	50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

(2) This tax treatment is subject to approval of the department of an application as provided in 15-32-106 and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation.

History: En. 84-7403 by Sec. 3, Ch. 548, L. 1975; amd. Sec. 1, Ch. 576, L. 1977; R.C.M. 1947, 84-7403; amd. Sec. 5, Ch. 480, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "adjusted gross individual income allowed in computing taxable income under chapter 30 or from" after "deductions from" near the beginning of (1).

15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 and 15-32-109 is limited to:

(1) capital investments made after January 1, 1975;

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and

(3) a ceiling of $100,000 in tax savings per year to any one person or firm.

History: En. 84-7406 by Sec. 6, Ch. 548, L. 1975; R.C.M. 1947, 84-7406; amd. Sec. 6, Ch. 480, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and 15-32-109" after "15-32-103" in the first sentence.

15-32-105. Application to new construction — rules. (1) It is the intent of the legislature that no deduction or credit under this part be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department. Provisions shall be made for an annual updating of rules and standards as required.

(2) The department may adopt rules to define standard components of conventional buildings and to establish other necessary elements of the definition of passive solar system consistent with the intent of 15-32-102.

History: En. Sec. 6, Ch. 576, L. 1977; amd. Sec. 7, Ch. 480, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or credit" after "no deduction" in the first sentence of (1).

15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for tax treatment under 15-32-103 or 15-32-109. Application shall be made to the department of revenue. The department of revenue shall approve an application which demonstrably promotes energy conservation or utilizes a recognized nonfossil form of energy generation. The department of revenue may refer an application involving energy generation to the department of natural resources and conservation for its advice, and the department of natural resources and conservation shall respond within 60 days. The department of revenue may refer an application involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny an application which it finds to be impractical or ineffective.

History: En. 84-7404 by Sec. 4, Ch. 548, L. 1975; R.C.M. 1947, 84-7404; amd. Sec. 8, Ch. 480, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or 15-32-109" after "15-32-103" at the end of the first sentence.

15-32-107. Loans by utilities and financial institutions — tax credit for interest differential. (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials or recognized nonfossil forms of energy generation systems in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced for the installation of energy conservation materials and recognized nonfossil forms of energy generation systems.

(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.

(3) Except as provided in subsection (6), a public utility or a financial institution lending money under this section may compute the difference

between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

(4) A utility may not claim a tax credit under this section exceeding $500,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(5) The public service commission may make rules to implement this section as it shall apply to public utilities only.

(6) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection (3).

History: **En. 84-7405 by Sec. 5, Ch. 548, L. 1975; R.C.M. 1947, 84-7405; amd. Sec. 1, Ch. 666, L. 1979; amd. Sec. 1, Ch. 266, L. 1981; amd. Sec. 7, Ch. 610, L. 1983.**

Compiler's Comments

1983 Amendment: In (3), inserted exception clause at beginning of subsection; and inserted (6).

1981 Amendment: Deleted "The utility shall charge interest equivalent to a rate between 5% and 7% per year on the declining balance of the sum advanced for installation of" and inserted "and" after "conservation materials" in the last sentence of (1); raised the amount of tax credit in (4) from $200,000 to $500,000.

15-32-108. Extension of existing classifications. Any classification of property under the provisions of section 3, Chapter 548, Laws of 1975, that existed prior to January 1, 1977, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 6, part 1, or that part as it may be recodified or amended.

History: **En. Sec. 9, Ch. 576, L. 1977; R.C.M. 1947, 84-7403.1; amd. Sec. 26, Ch. 581, L. 1979.**

15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of subsections (2) and (3), a resident individual taxpayer may take as a credit against the taxpayer's tax liability under chapter 30 a portion of his expenditure for a capital investment in a building for an energy conservation purpose, determined as follows:

(a) in the case of an expenditure for a residential building, the lesser of:

(i) $150; or

(ii) 5% of the expenditure; and

(b) in the case of an expenditure for a building not used as a residence, the lesser of:

(i) $300; or

(ii) 5% of the expenditure.

(2) The credit or the sum of the credits under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104.

(3) There is no carryback or carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method.

History: **En. Sec. 1, Ch. 480, L. 1981.**

Part 2

Tax Credit for Installing Alternative Energy System

15-32-201. Amount of credit — to whom available. A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to December 31, 1986, or who acquires title to a dwelling prior to December 31, 1986, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 ½% of the next $3,000 of the cost of such system, including installation costs, less grants received, against the income tax liability imposed against such taxpayer pursuant to chapter 30.

History: **En. 84-7414 by Sec. 1, Ch. 574, L. 1977; R.C.M. 1947, 84-7414(1); amd. Sec. 1, Ch. 480, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "December 31, 1986" for "December 31, 1982" in two places.

15-32-202. Taxable years in which credit may be claimed — carry-over. The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

History: **En. 84-7414 by Sec. 1, Ch. 574, L. 1977; R.C.M. 1947, 84-7414(2).**

15-32-203. Department to make rules. The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

History: **En. 84-7415 by Sec. 3, Ch. 574, L. 1977; R.C.M. 1947, 84-7415.**

Part 3

Tax Deduction for Purchasing Montana Produced Organic Fertilizer

15-32-301. Purpose. The purpose of this part is to promote the use of organic matter produced by Montana industries and municipalities to revitalize Montana lands and to assist in making organic fertilizer economically competitive with inorganic fertilizer.

History: **En. Sec. 1, Ch. 533, L. 1981.**

15-32-302. Definitions. As used in this part, the following definitions apply:

(1) "Raw organic matter" means unprocessed plant or animal waste products.

(2) "Organic fertilizer" means raw organic matter that has been processed and aged for use in increasing soil condition and fertility, and includes soil amendments as that term is defined in 80-10-101.

History: **En. Sec. 2, Ch. 533, L. 1981.**

15-32-303. Deduction for purchase of Montana produced organic fertilizer. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct his expenditures for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income.

History: **En. Sec. 3, Ch. 533, L. 1981.**

Part 4

Wind-Generated Electricity

15-32-401. Purpose and statement of policy. The purpose of this part is to encourage the development of a wind energy industry in Montana without adversely affecting tax revenues received from existing economic activity in the state. Because of the wind energy potential within the state, it is desirable to encourage wind energy generation for the purpose of attracting wind energy manufacturing industries to the state. It is also desirable for new or expanded industry to secure wind-generated electricity on a direct contract sales basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that encouragement be given to a wind energy industry without subtracting from existing sources of revenue to the state.

History: **En. Sec. 1, Ch. 648, L. 1983.**

15-32-402. Commercial investment credit — wind-generated electricity. (1) An individual, corporation, partnership, or small business corporation as defined in 15-31-201 that makes an investment of $5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system located in

Montana which generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce wind energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the wind energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the wind energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.

History: **En. Sec. 2, Ch. 648, L. 1983.**

15-32-403. Limitation on credit. Whenever any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section 48(1) of the Internal Revenue Code or any other federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs.

History: **En. Sec. 3, Ch. 648, L. 1983.**

15-32-404. Carryover of credit. The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the taxable year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding taxable year or years until the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted from tax liability. However, no credit may be carried beyond the seventh taxable year succeeding the taxable year in which the equipment was placed in service.

History: **En. Sec. 4, Ch. 648, L. 1983.**

15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162 and 15-31-123 through 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201(3) may not be applied to a facility for which a credit is claimed pursuant to this part.

History: **En. Sec. 5, Ch. 648, L. 1983; amd. Sec. 8, Ch. 648, L. 1983.**

Compiler's Comments

1983 Amendment: Section 8, Ch. 648, L. 1983, deleted bracketed language, which read: "[and the credits provided in SB 241]".

15-32-406. Separation of credit portion. In the case of a business, a portion of which qualifies for the credit pursuant to 15-32-402 and a portion of which does not qualify for the credit, taxes due from each portion must be separated by using the three-factor formula provided in 15-31-305.

History: **En. Sec. 6, Ch. 648, L. 1983.**

15-32-407. Rules authorized. The department of revenue is authorized to adopt rules to implement this part. The purpose of such rules must be to insure the following:

(1) proper and efficient administration of this part;

(2) proper reporting of information and payment of any amounts due by persons claiming the credit pursuant to this part;

(3) the claiming of the credit only against taxes due as a consequence of income produced by new economic activity in the state as described in 15-32-402.

History: **En. Sec. 7, Ch. 648, L. 1983.**

CHAPTER 33

SMALL BUSINESS INVESTMENT INCENTIVES

Part 1 — Small Business Investment Companies—Tax Exemptions

Section

15-33-101. Short title.
15-33-102. Purpose.
15-33-103. Definition.
15-33-104. Reporting — recordkeeping by the department.
15-33-105. Rulemaking authority.
15-33-106. Capital gains — dividends exempted.

Part 1

Small Business Investment Companies — Tax Exemptions

15-33-101. Short title. This part may be cited as the "Small Business Investment Incentive Act".

History: **En. Sec. 1, Ch. 571, L. 1981.**

15-33-102. Purpose. The purpose of this part is to encourage private sector investment in venture capital firms called small business investment companies, which are organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana. This part, by establishing limited tax exemptions, demonstrates a recognition by the legislature that significant incentives must be offered to attract private risk capital to manufacturing, agricultural, and timber product processing companies when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return. The legislature further recognizes the necessity of tax incentives for investors in manufacturing, agricultural, and timber product processing, given the hardship caused many Montana communities by their reliance on an economic base dominated by single, large industries.

History: **En. Sec. 2, Ch. 571, L. 1981.**

15-33-103. Definition. For the purposes of this part, "small business investment company" or "SBIC" means a small business investment company as defined in section 103 of the federal Small Business Investment Act of 1958, as amended.

History: **En. Sec. 3, Ch. 571, L. 1981.**

15-33-104. Reporting — recordkeeping by the department. The chairman or president of each small business investment company shall report on a form established by the department on a monthly basis the name of each investor, the amount of the investment made, and the date of investment.

History: **En. Sec. 4, Ch. 571, L. 1981.**

15-33-105. Rulemaking authority. The department of revenue may adopt rules necessary to carry out the provisions of this part.

History: **En. Sec. 5, Ch. 571, L. 1981.**

15-33-106. Capital gains — dividends exempted. Any capital gains or dividend income realized by an individual or a corporation from an investment in an SBIC organized in accordance with this part is exempt from taxation under the provisions of Title 15, chapters 30 and 31.

History: **En. Sec. 6, Ch. 571, L. 1981.**

CHAPTER 34

RESERVED

CHAPTER 35

COAL SEVERANCE TAX

Part 1 — General Provisions

Section
15-35-101. Legislative findings and declarations of purpose.
15-35-102. Definitions.

15-35-103. Severance tax — rates imposed — exemptions.
15-35-104. Quarterly statement and payment of tax.
15-35-105. Penalty for delinquent tax.
15-35-106. Annual testing of samples.
15-35-107. When value of coal may be imputed — procedure.
15-35-108. Disposal of severance taxes.
15-35-109. Repealed.
15-35-110. Renumbered 15-35-121 by Code Commissioner, 1983.
15-35-111. Renumbered 15-35-122 by Code Commissioner, 1983.
15-35-112. Deficiency assessment — hearing — interest.
15-35-113. Credit for overpayment — interest on overpayment.
15-35-114. Statute of limitations.
15-35-115 through 15-35-120 reserved.
15-35-121. Penalties for neglect or false statement.
15-35-122. Rulemaking authority.

Chapter Cross-References

Coal Tax Trust Fund, Art. IX, sec. 5, Mont. Const.

Coal Tax Oversight Subcommittee, Title 5, ch. 18, part 2.

Coal gross proceeds tax, Title 15, ch. 23, part 7.

Resource indemnity trust tax, Title 15, ch. 38.

Coal Tax Oversight Committee, Ch. 619, L. 1979.

Part 1

General Provisions

15-35-101. Legislative findings and declarations of purpose. (1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) coal in Montana, when subbituminous and recoverable by strip mining, is in sufficient demand that at least one-third of the price it commands at the mine may go to the economic rents of royalties and production taxes;

(f) coal in the lignite form is in less demand and producers of lignite are able to pay lesser amounts of royalty and production tax than producers of subbituminous can pay;

(g) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay;

(h) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry.

History: En. 84-1312 by Sec. 1, Ch. 525, L. 1975; R.C.M. 1947, 84-1312.

15-35-102. *(Temporary)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107.

(2) "Department" means the department of revenue.

(3) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(4) "Produced" means severed from the earth.

(5) "Strip mining" or "surface mining" is defined in 82-4-203.

(6) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(7) "Ton" means 2,000 pounds.

(8) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203.

15-35-102. *(Effective July 1, 1984)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(2) "Department" means the department of revenue.

(3) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(4) "Produced" means severed from the earth.

(5) "Strip mining" or "surface mining" is defined in 82-4-203.

(6) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(7) "Ton" means 2,000 pounds.

(8) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203.

History: En. 84-1313 by Sec. 2, Ch. 525, L. 1975; amd. Sec. 1, Ch. 156, L. 1977; R.C.M. 1947, 84-1313; amd. Sec. 1, Ch. 377, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last 2 sentences of (1) and inserted (1)(a) through (1)(d).

15-35-103. Severance tax — rates imposed — exemptions. (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

"Value" means the contract sales price.

(2) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.

(3) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than

50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

History: En. 84-1314 by Sec. 3, Ch. 525, L. 1975; amd. Sec. 1, Ch. 164, L. 1977; R.C.M. 1947, 84-1314; amd. Sec. 2, Ch. 303, L. 1983.

Compiler's Comments

1983 Amendment: In (3), increased amount of coal exempt from severance tax from 20,000 tons to 50,000 tons; and after "calendar year" inserted the exception for taxation on amounts produced in excess of 50,000 tons.

15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than 30 days following the close of the quarter. The form shall be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. 84-1315 by Sec. 4, Ch. 525, L. 1975; R.C.M. 1947, 84-1315; amd. Sec. 1, Ch. 334, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "signed by the operator if the operator is an individual or" for "verified" in the fourth sentence; inserted "if the operator is a business entity" at the end of the fourth sentence.

Cross-References

Coordination with statement required under coal gross proceeds tax, 15-23-704.

15-35-105. Penalty for delinquent tax. The department shall add to the amount of all delinquent severance taxes a penalty of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment. The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department.

History: En. 84-1316 by Sec. 5, Ch. 525, L. 1975; R.C.M. 1947, 84-1316; amd. Sec. 16, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within 15 days, a lien may be filed as set forth in 15-23-704" at the end of the third sentence.

15-35-106. Annual testing of samples. The Montana state bureau of mines and geology shall test coal production subject to this chapter and may make rules governing the collection of test data. A person subject to this chapter shall submit to the bureau on or before August 1 each year a sample of mine-run, "as is" coal from each mine producing that year. Additional samples shall be submitted at the request of the bureau. The bureau shall compute the Btu per pound of each sample received and forward this information to the department prior to September 1 each year.

History: **En. 84-1317 by Sec. 6, Ch. 525, L. 1975; R.C.M. 1947, 84-1317.**

15-35-107. When value of coal may be imputed — procedure. (1) The department may or shall at the request of the taxpayer impute a value to the coal which approximates market value f.o.b. mine in a case where:

(a) the operator of a coal mine is using the produced coal in an energy-conversion or other manufacturing process;

(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;

(c) a person sells coal under a contract which is not an arm's-length agreement; or

(d) a person neglects or refuses to file a statement under 15-23-701 or a statement and tax return under this chapter.

(2) For purposes of subsection (1)(b), "market value f.o.b. mine" means the value of the coal subsequent to primary and secondary crushing but prior to drying, cleaning, or other processing.

(3) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C., section 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

History: **En. 84-1318 by Sec. 7, Ch. 525, L. 1975; R.C.M. 1947, 84-1318; amd. Sec. 1, Ch. 326, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of (1), after "department may" inserted "or shall at the request of the taxpayer"; inserted (1)(b); and inserted (2).

Cross-References

Estimating value upon failure to file gross proceeds return, 15-23-104.

15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the state special revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the state special revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the state special revenue fund for state equalization aid to public schools of the state;

(f) 1% to the state special revenue fund to the credit of the county land planning account;

(g) 1 ¼% to the credit of the renewable resource development bond fund;

(h) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to the state special revenue fund for conservation districts;

(k) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 281, throughout section, substituted "state special revenue fund" for "earmarked revenue fund"; in (3)(g), before "credit", deleted "sinking fund to the" and substituted "bond fund" for "bond account"; at beginning of (3)(h), substituted "5% to a nonexpendable trust fund" for "5% to the earmarked revenue fund to the credit of a trust fund"; and in (3)(k), substituted "debt service fund type" for "sinking fund" and "debt service fund" for "sinking account".

Chapter 541 inserted (2); and in introductory to (3), changed "allocation to the trust fund under subsection (1)" to "allocations provided by subsections (1) and (2)".

Effective Date: Section 7, Ch. 541, L. 1983, provided: "Sections 1 through 5 [60-3-216 through 60-3-218 and 1983 amendments to

15-35-108 and 17-3-201] are effective July 1, 1983, and terminate July 1, 1993."

1981 Amendments: Chapter 479 reduced the amount of the coal severance tax allocated to alternative energy research from 5% to 4 ½ % in (2)(b) (now (3)(b)); and inserted subsection (2)(j) (now (3)(j)).

Chapter 505 reduced the amount of the coal severance tax allocated to the sinking fund to the credit of the renewable resource development bond account from 2 ½ % to 1 ¼ % in (2)(g) (now (3)(g)); and inserted (2)(k) (now (3)(k)) in the version which will become effective July 1, 1983.

Cross-References

Coal Tax Trust Fund, Art. IX, sec. 5, Mont. Const.

Permissible investments of funds allocated to Coal Tax Trust Fund, 17-6-211.

Appropriation to state equalization aid, 20-9-343.

Duties of advisory committee — cultural and aesthetic projects, Title 22, ch. 2, part 3.

Cultural and aesthetic projects grants, 22-2-301.

Acquisition of certain state parks, monuments, or historical sites, 23-1-108.

Appropriation to Renewable Resource Development Bond Account, 90-2-124.

Creation of Alternative Energy Research Development and Demonstration Account, 90-4-103.

Disposition of funds allocated to the Local Impact and Education Trust Fund Account and the Coal Area Highway Improvement Account, Title 90, ch. 6, part 2.

Coal Area Highway Improvement Account created, 90-6-202.

Local Impact and Education Trust Fund Account created, 90-6-202.

15-35-109. Repealed. Sec. 1, Ch. 407, L. 1981.

History: En. 84-1325 by Sec. 18, Ch. 525, L. 1975; R.C.M. 1947, 84-1325.

15-35-110. Renumbered 15-35-121 by Code Commissioner, 1983.

15-35-111. Renumbered 15-35-122 by Code Commissioner, 1983.

15-35-112. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983.

15-35-113. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-35-112 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-35-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-35-115 through 15-35-120 reserved.

15-35-121. Penalties for neglect or false statement. A person who fails, neglects, or refuses to file any statement required under this chapter or who makes a false statement commits a misdemeanor. A person convicted under this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 84-1324 by Sec. 13, Ch. 525, L. 1975; R.C.M. 1947, 84-1324; MCA 1981, 15-35-110; redes. 15-35-121 by Code Commissioner, 1983.

15-35-122. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under this chapter.

History: En. Sec. 32, Ch. 581, L. 1979; MCA 1981, 15-35-111; redes. 15-35-122 by Code Commissioner, 1983.

CHAPTER 36

OIL AND GAS SEVERANCE TAX

Part 1 — General Provisions

Section

15-36-101. Definitions and rate of tax.
15-36-102. Quarterly payment of tax.
15-36-103. Determination of gross value of product.
15-36-104. Record of product — carriers to furnish data.
15-36-105. Statement to accompany payment — records — collection of tax — refunds.
15-36-106. Falsifying or failing to file statements unlawful.
15-36-107. Procedure to compute tax in absence of statement — penalty and interest.
15-36-108. Warrant for distraint.
15-36-109. Penalty for violations.
15-36-110. Severance tax supplemental.
15-36-111. Repealed.
15-36-112. Disposition of oil and gas severance taxes.
15-36-113. Deficiency assessment — hearing — interest.
15-36-114. Credit for overpayment — interest on overpayment.
15-36-115 through 15-36-120 reserved.
15-36-121. Exemption from severance tax.
15-36-122. Statute of limitations.

Chapter Cross-References

Oil and gas net proceeds tax, 15-23-601.

Resource indemnity trust tax, Title 15, ch. 38.

Privilege and license tax on oil and gas producers, 82-11-131.

Part 1

General Provisions

15-36-101. Definitions and rate of tax. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in

15-36-121, each year when engaged in or carrying on any such business in this state pay to the department of revenue for the exclusive use and benefit of the state of Montana a severance tax computed at the following rates:

(a) 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1981, and on or before March 31, 1983; 6% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1983, and on or before March 31, 1985; and 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit thereafter; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of natural gas produced from each lease or unit; but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(2) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor may any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be considered to be the engaging in or carrying on of any such business. If, in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation is produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of such business within this state within the meaning of this section.

(3) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R.C.M. 1921; amd. Sec. 1, Ch. 67, L. 1923; re-en. Sec. 2398, R.C.M. 1935; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959;

amd. Sec. 1, Ch. 359, L. 1969; amd. Sec. 1, Ch. 245, L. 1975; amd. Sec. 1, Ch. 262, L. 1975; amd. Sec. 1, Ch. 412, L. 1975; amd. Sec. 8, Ch. 156, L. 1977; amd. Sec. 1, Ch. 160, L. 1977; amd. Sec. 3, Ch. 256, L. 1977; R.C.M. 1947, 84-2202; amd. Sec. 1, Ch. 536, L. 1981; amd. Sec. 1, Ch. 671, L. 1983.

Compiler's Comments

1983 Amendment: In middle of (1)(a) inserted "on or after April 1, 1983, and on or before March 31, 1985; and 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit".

1981 Amendment: Increased the severance tax on petroleum from 2.1% of the first $6,000 and 2.65% of the production in excess of $6,000 to 5% of the production between April 1, 1981, and March 31, 1983, and 6% thereafter; and deleted subsection (3), which provided for combining all leases in a unitized area for purposes of applying either the 2.1% rate or the 2.65% rate.

15-36-102. Quarterly payment of tax. Such severance tax shall be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period shall be paid to the department of revenue within 60 days after the end of each quarterly period.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R.C.M. 1921; amd. Sec. 2, Ch. 67, L. 1923; re-en. Sec. 2399, R.C.M. 1935; amd. Sec. 8, Ch. 14, L. 1941; amd. Sec. 113, Ch. 516, L. 1973; amd. Sec. 2, Ch. 245, L. 1975; amd. Sec. 2, Ch. 262, L. 1975; R.C.M. 1947, 84-2203.

15-36-103. Determination of gross value of product. The total gross value of all petroleum and other mineral or crude oil or natural gas produced each year shall be determined by taking the total number of barrels or cubic feet thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the department of revenue; provided, however, that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of gas produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil or gas is produced or for pumping said petroleum or other mineral or crude oil or gas from the said well to a tank or pipeline.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R.C.M. 1921; amd. Sec. 3, Ch. 67, L. 1923; re-en. Sec. 2400, R.C.M. 1935; amd. Sec. 114, Ch. 516, L. 1973; amd. Sec. 3, Ch. 245, L. 1975; R.C.M. 1947, 84-2204.

15-36-104. Record of product — carriers to furnish data. Every such person shall keep a record in such form as the department of revenue may require of all petroleum and other mineral or crude oil or natural gas extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the department or its agents or employees. It shall be the duty of railroad, pipeline, and transportation companies carrying crude or mineral oil or natural gas to furnish to the department, whenever requested to do so, all data relative to the shipment of such products that may be required to properly enforce the provisions of this part. The failure of any railroad, pipeline, or transportation company to comply with the provisions of this section shall make such company liable to a penalty of $100 for each day it fails to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R.C.M. 1921; amd. Sec. 5, Ch. 67, L. 1923; re-en. Sec. 2402, R.C.M. 1935; amd. Sec. 116, Ch. 516, L. 1973; amd. Sec. 4, Ch. 245, L. 1975; amd. Sec. 9, Ch. 156, L. 1977; R.C.M. 1947, 84-2206.

15-36-105. Statement to accompany payment — records — collection of tax — refunds. (1) Each and every person must, within 60 days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by such person in the state during each month of such quarter and during the whole quarter, the average value thereof during each month, and the total value thereof for the whole quarter, together with the total amount due to the state as severance taxes for such quarter, and must within such 60 days deliver such statement and, except as provided in 15-36-121, pay to the department the amount of the taxes shown by such statement to be due to the state for the quarter for which such statement is made. Such statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any such person engaged in carrying on such business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all thereof in one statement. The department shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department to examine each of such statements and compute the taxes thereon, and the amount so computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department within 10 days after written notice of the amount of the deficiency shall be mailed by the department to such taxpayer. If the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

History: En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R.C.M. 1921; amd. Sec. 6, Ch. 67, L. 1923; re-en. Sec. 2403, R.C.M. 1935; amd. Sec. 1, Ch. 449, L. 1973; amd. Sec. 117, Ch. 516, L. 1973; amd. Sec. 5, Ch. 245, L. 1975; amd. Sec. 4, Ch. 256, L. 1977; R.C.M. 1947, 84-2207; amd. Sec. 2, Ch. 334, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "signed by the individual or the president" for "signed and verified by the oath of the individual or individuals or by the president" in the second sentence of (1); substituted "statement" for "same" at the end of the second sentence of (1).

Cross-References

Deficiency assessment procedure, 15-36-113.

15-36-106. Falsifying or failing to file statements unlawful. It shall be unlawful for any such person to fail, neglect, or refuse to file any statement or certificate required by this part in the manner or within the time herein required or to make such statement false in any particular.

History: En. Sec. 8, Ch. 266, L. 1921; re-en. Sec. 2404, R.C.M. 1921; amd. Sec. 7, Ch. 67, L. 1923; re-en. Sec. 2404, R.C.M. 1935; R.C.M. 1947, 84-2208.

15-36-107. Procedure to compute tax in absence of statement — penalty and interest. If any such person shall fail, neglect, or refuse to file any statement required by 15-36-105 within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in this state during such quarter and during each month thereof and the average value thereof during each such month and shall determine and fix the amount of the severance taxes due to the state from such person for such quarter and shall add to the amount of such severance taxes a penalty of 25% thereof plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay any severance tax, a letter setting forth the amount of severance tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed. The 25% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-36-105 is provided to the department.

History: En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R.C.M. 1921; amd. Sec. 8, Ch. 67, L. 1923; re-en. Sec. 2405, R.C.M. 1935; amd. Sec. 1, Ch. 328, L. 1969; amd. Sec. 118, Ch. 516, L. 1973; amd. Sec. 6, Ch. 245, L. 1975; amd. Sec. 3, Ch. 262, L. 1975; R.C.M. 1947, 84-2209; amd. Sec. 17, Ch. 439, L. 1981; amd. Sec. 3, Ch. 93, L. 1983.

Compiler's Comments

1983 Amendment: Increased the penalty from 10% to 25%.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within such time, a lien may be filed as set forth in 15-36-108" at the end of the second to the last sentence; deleted a requirement that the taxpayer pay the amount due within 15 days of receiving the letter between the second to the last and the last sentence.

15-36-108. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-2209.1 by Sec. 4, Ch. 262, L. 1975; amd. Sec. 10, Ch. 156, L. 1977; R.C.M. 1947, 84-2209.1; amd. Sec. 18, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-36-109. Penalty for violations. Violation of any of the provisions of this part is a misdemeanor and punishable by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 11, Ch. 266, L. 1921; re-en. Sec. 2407, R.C.M. 1921; re-en. Sec. 2407, R.C.M. 1935; R.C.M. 1947, 84-2210; amd. Sec. 27, Ch. 581, L. 1979.

15-36-110. Severance tax supplemental. The severance taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this part.

History: En. Sec. 12, Ch. 266, L. 1921; re-en. Sec. 2408, R.C.M. 1921; re-en. Sec. 2408, R.C.M. 1935; R.C.M. 1947, 84-2211.

15-36-111. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R.C.M. 1921; amd. Sec. 4, Ch. 67, L. 1923; re-en. Sec. 2401, R.C.M. 1935; amd. Sec. 115, Ch. 516, L. 1973; R.C.M. 1947, 84-2205.

15-36-112. Disposition of oil and gas severance taxes. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.

(2) The severance taxes collected under this chapter are allocated as follows:

(a) 33 ⅓ % of the oil severance tax, not to exceed $42 million for the biennium ending June 30, 1985, is deposited in the local government block grant account within the state special revenue fund;

(b) the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is allocated to the general fund of the county for distribution as provided in subsection (3);

(c) any amount not allocated to the local government block grant account or the county under subsection (2)(a) or (2)(b) is allocated to the state general fund.

(3) (a) The county treasurer shall distribute the money received under subsection (2)(b) of this section to the county and to all the incorporated cities and towns within the county in the following manner. The county receives the available money multiplied by the ratio of the rural population to the county population. Each incorporated municipality receives the available money multiplied by the ratio of the population of the incorporated municipality to the county population. The rural population is that population of the county living outside the boundaries of an incorporated municipality. Population shall be based on the most recent figures as determined by the department of commerce.

(b) The money distributed under this subsection may be used for any purpose as determined by the governing body of the county, city, or town.

History: En. Sec. 1, Ch. 700, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 2, Ch. 114, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 707, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 114, at end of (3)(a), substituted "department of commerce" for "department of administration".

Chapter 707 inserted (2)(a); in (2)(c) after "allocated to the" inserted "local government block grant account or the"; in (2)(c) after "(2)(a)" inserted "or (2)(b)"; in (3)(a) after "received under" inserted "subsection (2)(b) of".

Chapter 281, in (2)(a), substituted "state special revenue fund" for "earmarked revenue fund".

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (3)(a).

Cross-References

Local government block grant program, Title 7, ch. 6, part 3.

Disposition of tax proceeds, 15-1-501.

15-36-113. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983.**

15-36-114. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-36-113 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-36-115 through 15-36-120 reserved.

15-36-121. Exemption from severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state and to lessen Montana's dependence on imported natural gas.

(2) Natural gas produced from a well 5,000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, 1992, is exempt from all of the severance tax imposed by 15-36-101 for 3 years if the gas produced from the well is:

(a) placed into a natural gas distribution system for delivery to consumers after diligent completion of the well; and

(b) distributed by a natural gas distribution system serving only natural gas consumers a majority of which are within Montana or at least 10,000 natural gas consumers within Montana.

(3) The 3-year exemption provided by this section shall begin when natural gas from a qualifying well is first placed into a natural gas distribution system.

(4) Notwithstanding the provisions of subsection (2), all reporting requirements under the severance tax remain in effect.

History: En. 84-2212, 84-2213 by Secs. 1, 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2212, 84-2213(part); amd. Sec. 1, Ch. 265, L. 1981; amd. Sec. 1, Ch. 124, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "1992" for "1982" before "is exempt".

1981 Amendment: Substituted "1982" for "1980" before "is exempt" in (2).

Cross-References

Deduction for drilling costs of oil and gas wells, 15-23-604.

Exemption from one-half of net proceeds tax, 15-23-612.

15-36-122. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

CHAPTER 37

MINING LICENSE TAXES

Part 1 — Metalliferous Mines

Section
15-37-101. License tax on metal mines.
15-37-102. Gross value of metal mine yield — computation.

15-37-103. Rate of tax.
15-37-104. Mine operator's statement of gross value — reports and sampling.
15-37-105. Computation and payment of tax.
15-37-106. Procedure in case of failure to file statements.
15-37-107. Warrant for distraint.
15-37-108. Delinquent taxes — penalty.
15-37-109. False or erroneous statements — investigation.
15-37-110. Hearing on determination of gross value of product or amount of tax.
15-37-111. License tax supplemental.
15-37-112. Returns of dissolved corporations.
15-37-113. Repealed.
15-37-114. Deficiency assessment — hearing — interest.
15-37-115. Credit for overpayment — interest on overpayment.
15-37-116. Statute of limitations.
15-37-117. Disposition of metalliferous mines license taxes.

Part 2 — Micaceous Mineral Mines

15-37-201. License tax on micaceous mines.
15-37-202. Quarterly payment.
15-37-203. Records.
15-37-204. Quarterly return.
15-37-205. Procedure on failure to file statement.
15-37-206. Collection — warrant for distraint.
15-37-207. Disposition of proceeds of tax.
15-37-208. Repealed.
15-37-209. Renumbered 15-37-221 by Code Commissioner, 1983.
15-37-210. Deficiency assessment — hearing — interest.
15-37-211. Credit for overpayment — interest on overpayment.
15-37-212. Statute of limitations.
15-37-213 through 15-37-220 reserved.
15-37-221. Penalty for violations.

Chapter Cross-References

Mines net proceeds tax, Title 15, ch. 23, part 5.

Metal mines gross proceeds tax, Title 15, ch. 23, part 8.

Resource indemnity trust tax, Title 15, ch. 38.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1

Metalliferous Mines

Part Cross-References

Disposition of tax proceeds, 15-1-501.

15-37-101. *(Temporary)* **License tax on metal mines.** (1) Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind shall be mined, extracted, or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for each year when engaged in or carrying on such business, work, or operations pay to the department of revenue for the exclusive use and benefit of the state of Montana a license tax for engaging in and carrying on such business, work, or operation in this state.

(2) Nothing contained in this part shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims or any annual assessment work or work required in the obtaining of title to mining property from the United States or required by the laws of the United States or of this state in order to hold possessory title to any mining claims be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property. **(Ineffective July 1, 1985—Applicable to tax years ending on or before December 31, 1984.)**

15-37-101. *(Effective July 1, 1985—Applicable to tax years beginning after December 31, 1984)* **License tax on metal mines.** (1) Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind shall be mined, extracted, or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for each year when engaged in or carrying on such business, work, or operations pay to the department of revenue for the exclusive use and benefit of the state of Montana and impacted local government units a license tax for engaging in and carrying on such business, work, or operation in this state.

(2) Nothing contained in this part shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims or any annual assessment work or work required in the obtaining of title to mining property from the United States or required by the laws of the United States or of this state in order to hold possessory title to any mining claims be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

History: En. Sec. 2, Initiative No. 28, 1925; re-en. Sec. 2344.2, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1975; R.C.M. 1947, 84-2002; amd. Sec. 5, Ch. 619, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (1), inserted "and impacted local government units".

15-37-102. Gross value of metal mine yield — computation. The "quarterly reporting date", as used in this part, means the last day of the calendar quarter. The "quarterly gross value of product", as used in this part, means the market value of all merchantable metals or precious and semiprecious gems and stones extracted or produced each calendar quarter from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction, or treatment of any such ores. Whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the quarterly gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar quarter for which a report is being made. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable.

History: En. Sec. 3, Initiative No. 28, 1925; re-en. Sec. 2344.3, R.C.M. 1935; amd. Sec. 101, Ch. 516, L. 1973; amd. Sec. 4, Ch. 156, L. 1977; R.C.M. 1947, 84-2003; amd. Sec. 1, Ch. 227, L. 1983.

Compiler's Comments

1983 Amendment: Inserted first sentence; in second sentence, substituted "quarterly" for "total"; in middle of second sentence, substituted "calendar quarter" for "year"; near beginning of third sentence, substituted "quarterly gross value" for "gross value"; at end of third sentence, substituted "quarter for which a report is being made" for "year immediately preceding"; and made minor phraseology changes.

15-37-103. *(Temporary)* **Rate of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by such person from such business, work, or operation within this state during the calendar year immediately preceding, at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $100,000	0.15%
more than $100,000 and not more than $250,000	0.575% of the increment
more than $250,000 and not more than $400,000	0.86% of the increment
more than $400,000 and not more than $500,000	1.15% of the increment
more than $500,000	1.438% of the increment

(Ineffective July 1, 1985—Applicable to tax years ending on or before December 31, 1984.)

15-37-103. *(Effective July 1, 1985—Applicable to tax years beginning after December 31, 1984)* **Rate of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by such person from such business, work, or operation within this state during the calendar year immediately preceding, at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000 and not more than $500,000	.5% of the increment
more than $500,000 and not more than $1,000,000	1% of the increment
more than $1,000,000	1.5% of the increment

History: En. Sec. 4, Initiative No. 28, 1925; re-en. Sec. 2344.4, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971; amd. Sec. 2, Ch. 126, L. 1975; amd. Sec. 5, Ch. 156, L. 1977; R.C.M. 1947, 84-2004; amd. Sec. 6, Ch. 619, L. 1983.

Compiler's Comments

1983 Amendment: Changed tax brackets and rates, which formerly were:

"Gross Value of Product	Rate of Tax (percentage of gross value)
first $100,000	0.15%
more than $100,000 and not more than $250,000	0.575% of the increment
more than $250,000 and not more than $400,000	0.86% of the increment
more than $400,000 and not more than $500,000	1.15% of the increment
more than $500,000	1.438% of the increment".

15-37-104. Mine operator's statement of gross value — reports and sampling. (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than 60 days following the quarterly reporting date of each quarter when engaged in or carrying on any such business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar quarter immediately preceding. If good cause is shown, the department may grant a reasonable extension of the time for filing statements. The statement shall be in the form prescribed by the department of revenue and shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore or concentrate has been shipped or sold during the period covered by the statement and such other information as the department may require;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the quarterly gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the

ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

(4) If the quarterly statement of gross value described herein is not filed with the department within 60 days following the calendar quarter ending, a penalty shall be assessed. The penalty shall be the greater of $25 or 2% of the tax that would be due under this part if collected quarterly. If good cause is shown, the department may waive the penalty.

History: En. Sec. 5, Initiative No. 28, 1925; re-en. Sec. 2344.5, R.C.M. 1935; amd. Sec. 102, Ch. 516, L. 1973; amd. Sec. 3, Ch. 126, L. 1975; R.C.M. 1947, 84-2005; amd. Sec. 2, Ch. 288, L. 1981; amd. Sec. 2, Ch. 227, L. 1983.

Compiler's Comments

1983 Amendment: In (1), in middle of first sentence, substituted "60 days following the quarterly reporting date of each quarter" for "April 15 in such year"; near end of first sentence, substituted "quarter" for "year"; inserted second sentence; substituted last sentence of (1) for former language, which read: "Such statement shall be in the form prescribed by the department of revenue and must be delivered to the department not later than April 15. The department may grant a reasonable extension of time for filing statements upon good cause shown therefor. Such statement shall show the following:"; in (1)(f), substituted "quarterly gross value" for "gross value"; inserted (4); and made minor changes in phraseology.

1981 Amendment: Inserted "and telephone number" after "address" and "or operator" after "lessee" in (1)(a); substituted "the mine's location by county and legal description" for "the description and location of the mine or mining property" in (1)(b); inserted "concentrate" after "ore" in (1)(c); inserted "or concentrate" after "ore" in (1)(d); inserted "concentrates" after "ores" in two places in (1)(e); added subsections (2) and (3).

15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103 and is due and payable on or before March 1 of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March 1 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof.

(2) If any such person has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of said mine's product so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; re-en. Sec. 2344.6, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1959; amd. Sec. 103, Ch. 516, L. 1973; amd. Sec. 4, Ch. 126, L. 1975; R.C.M. 1947, 84-2006; amd. Sec. 3, Ch. 227, L. 1983.

Compiler's Comments

1983 Amendment — Code Commissioner Correction: In (1), substituted present language for former (1), which read: "The department of revenue shall examine each such statement and return filed and determine and ascertain therefrom and compute and assess the amount of the license tax to be paid by the person making and filing the same and shall, not later than June 1, mail to each person making and filing such statement and return a written notice of the amount of the license tax to be paid by each, respectively; that the same is due and payable; that it will become delinquent at 5 p.m. on June 30 immediately following; that if the same becomes delinquent, a penalty of 10% will be added thereto; and that the whole amount of such license tax, with penalty added, will bear interest at the rate of 1% per month or fraction thereof from the date the same becomes delinquent until paid."; the two references to "this part" were changed from "this chapter" by the Code Commissioner to correct inaccurate references.

15-37-106. Procedure in case of failure to file statements. If any person shall fail, refuse, or neglect to make and file all required quarterly statements of gross yield for a production year on or before March 1 of the year immediately following the production year, the department of revenue shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid and shall make and file a statement showing the amount of such gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by such person and shall immediately give notice to such person in the same manner as though such statement had been filed within time and shall proceed to collect such license tax, adding thereto and collecting therewith if the same is delinquent the same penalty and interest as provided for herein for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925; re-en. Sec. 2344.8, R.C.M. 1935; amd. Sec. 104, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1975; R.C.M. 1947, 84-2008; amd. Sec. 4, Ch. 227, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of section, substituted "all required quarterly statements of gross yield for a production year on or before March 1 of the year immediately following the production year" for "such statement and return within the time prescribed".

15-37-107. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-2008.1 by Sec. 10, Ch. 126, L. 1975; amd. Sec. 6, Ch. 156, L. 1977; R.C.M. 1947, 84-2008.1; amd. Sec. 19, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-37-108. Delinquent taxes — penalty. All license taxes assessed under the provisions of this part shall become delinquent if not paid on or before midnight of March 1 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of 8%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 8% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 1 of the year immediately following the production year.

History: En. Sec. 7, Initiative No. 28, 1925; re-en. Sec. 2344.7, R.C.M. 1935; amd. Sec. 2, Ch. 165, L. 1959; amd. Sec. 5, Ch. 126, L. 1975; R.C.M. 1947, 84-2007; amd. Sec. 5, Ch. 227, L. 1983.

Compiler's Comments

1983 Amendment: After first "paid" substituted present language for former language, which read: "by 5 p.m. on June 30 following the date when the same are assessed, and as the same become delinquent, a penalty of 10% shall be added thereto and the whole amount of said license tax, with penalty added, shall bear interest at the rate of 1% per month or fraction thereof from the date of becoming delinquent until paid".

Cross-References

Deficiency assessment procedure, 15-37-114.

15-37-109. False or erroneous statements — investigation. (1) Should the director of the department of revenue have reason to believe that any statement and return is false or erroneous in any particular, he may require the person or, if made by a corporation, association, or company, the officers thereof and the employees of any such person, corporation, association, or company to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein and may examine all books, records, papers, and documents of such person pertaining to such business, upon giving 5 days' written notice to such persons or officers or employees thereof having custody of such books, records, papers, and documents. Any person failing, refusing, or neglecting to so appear or refusing to be sworn or to testify or refusing to answer any material question propounded by the director or any of his employees or refusing to permit the director or his employees to examine such books, records, papers, or documents or any thereof pertaining to such business shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for a term not exceeding 6 months or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents, and records of such person, shall find and determine that such statement and return are erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person and may add thereto a penalty of not exceeding 50% and shall thereupon immediately mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty due and payable.

(2) The department shall collect such license tax with penalty added, and if the same has become delinquent, it shall also collect interest thereon from the date of delinquency until paid, at the rate of 1% per month or fraction thereof. In order to verify such statement and return, the department may require any person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of

copper, lead, or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement, during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction, or treatment of such ores or mineral product.

(3) The books, records, papers, and documents of such person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this part to make or file any statement or to verify, under oath, any statement shall make such statement false in any material respect or shall verify, under oath, any statement false in any respect or shall fail, neglect, or refuse to file any statement required by said department or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore or shall refuse to allow the director or his employees at any time or place to inspect or examine the books, records, papers, and documents of such person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, 1925; re-en. Sec. 2344.9, R.C.M. 1935; amd. Sec. 72, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1975; R.C.M. 1947, 84-2009.

Cross-References

Deficiency assessment procedure, 15-37-114.

15-37-110. Hearing on determination of gross value of product or amount of tax. Every person whose license tax has been determined and assessed by the department of revenue under any of the provisions of this part who feels aggrieved by the determination and assessment of the department as to the amount of gross value of product or as to the amount of the license tax may, at any time within 10 days after the receipt of the required notice of such determination and assessment, file with the state tax appeal board a petition for a hearing, in which petition must be stated the grounds and reasons therefor and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department has erred in any manner in ascertaining and determining the amount of the gross value of product or the amount of the license tax, or both, the board shall immediately correct such error or errors; and if such correction is in conformity with the request contained in the petition for a hearing, the board shall take no further steps in connection with such petition other than to notify the department of the correct amount of the license tax due from such person after the making of such correction and notifying such person thereof. If from such examination it does not appear to the satisfaction of the state tax appeal board that the department has erred in any manner, the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board considers reasonable. At the hearing of such petition, any taxpayer interested and the department may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product and reassess the amount of the license tax to be paid by such person and give notice thereof to such person and the department.

History: **En. Sec. 10, Initiative No. 28, 1925; re-en. Sec. 2344.10, R.C.M. 1935; amd. Sec. 73, Ch. 405, L. 1973; amd. Sec. 8, Ch. 126, L. 1975; amd. Sec. 7, Ch. 156, L. 1977; R.C.M. 1947, 84-2010.**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-37-111. License tax supplemental. The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees now required to be paid by persons subject to the provisions of this part.

History: **En. Sec. 14, Initiative No. 28, 1925; re-en. Sec. 2344.14, R.C.M. 1935; R.C.M. 1947, 84-2014.**

15-37-112. Returns of dissolved corporations. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall, on or before the date of such dissolution or cessation of business, make all statements, reports, and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced and pay the tax due for such period as it carried on such business. The department of revenue may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: **En. Sec. 1, Ch. 11, L. 1941; amd. Sec. 108, Ch. 516, L. 1973; R.C.M. 1947, 84-2016.**

15-37-113. Repealed. Sec. 4, Ch. 334, L. 1981.

History: **En. Sec. 13, Initiative No. 28, 1925; re-en. Sec. 2344.13, R.C.M. 1935; amd. Sec. 107, Ch. 516, L. 1973; amd. Sec. 11, Ch. 126, L. 1975; R.C.M. 1947, 84-2013.**

15-37-114. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer.

The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983.**

15-37-115. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-37-114 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-37-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-37-117. *(Effective July 1, 1985—Applicable to tax years beginning after December 31, 1984)* **Disposition of metalliferous mines license taxes.** Metalliferous mines license taxes collected under the provisions of this part are allocated as follows:

(1) to the credit of the general fund of the state, 67% of total collections each year;

(2) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 33% of total collections each year.

History: En. Sec. 1, Ch. 619, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "state special revenue fund" for "earmarked revenue fund".

Part 2

Micaceous Mineral Mines

15-37-201. License tax on micaceous mines. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state from which vermiculite, perlite, kerrite, maconite, or any other micaceous minerals are mined, extracted, or produced must pay to the department of revenue for the exclusive use and benefit of the state a license tax for engaging in and carrying on such business in an amount equal to 5 cents per ton for each and every ton of concentrates mined, extracted, or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951; amd. Sec. 224, Ch. 516, L. 1973; amd. Sec. 1, Ch. 209, L. 1977; R.C.M. 1947, 84-5902.

15-37-202. Quarterly payment. Such annual license tax as imposed by 15-37-201 shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of such license tax due for each such quarter shall be paid to the department of revenue within 30 days after the end of each quarter.

History: En. Sec. 3, Ch. 50, L. 1951; amd. Sec. 225, Ch. 516, L. 1973; R.C.M. 1947, 84-5903.

15-37-203. Records. Every such person shall keep a record in such form as the department of revenue may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the department, its agents or employees.

History: En. Sec. 5, Ch. 50, L. 1951; amd. Sec. 227, Ch. 516, L. 1973; R.C.M . 1947, 84-5905.

15-37-204. Quarterly return. (1) Each and every person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue and deliver to the department a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite, or any other micaceous minerals mined or produced by such person during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter, and must, within such 30 days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state for the quarter for which such statement is made.

(2) Any person engaged in carrying on such business at more than one place or operating more than one mine in this state may include all thereof in one statement.

(3) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 50, L. 1951; amd. Sec. 228, Ch. 516, L. 1973; amd. Sec. 2, Ch. 209, L. 1977; R.C.M. 1947, 84-5906.

15-37-205. Procedure on failure to file statement. (1) If any person shall fail, neglect, or refuse to file any statement required by 15-37-204 within the time required or shall fail to pay the tax required by this part on or before the date such payment is due, the department of revenue shall immediately after such time has expired proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all delinquent micaceous mineral mines license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-37-204 is provided.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977; R.C.M. 1947, 84-5907(1), (2).

15-37-206. Collection — warrant for distraint. (1) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a warrant for distraint may be filed.

(2) If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977; R.C.M. 1947, 84-5907(3); amd. Sec. 20, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the last sentence of (1) for "The letter shall advise that if payment is not made within 15 days, a lien may be filed"; deleted provision at the end of (1) that the amount due must be paid within 15 days of receiving the letter and that if not paid there is a lien on the taxpayers' property; added the first sentence of (2); and deleted a provision at the end of the section that the lien provided for in this section may be enforced in the same manner as judgment liens.

15-37-207. Disposition of proceeds of tax. All license taxes collected under the provisions of this part shall be deposited to the credit of the general fund of the state.

History: En. Sec. 8, Ch. 50, L. 1951; R.C.M. 1947, 84-5908.

15-37-208. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 4, Ch. 50, L. 1951; amd. Sec. 226, Ch. 516, L. 1973; R.C.M. 1947, 84-5904.

15-37-209. Renumbered 15-37-221 by Code Commissioner, 1983.

15-37-210. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983.

15-37-211. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-37-210 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-37-212. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-37-213 through 15-37-220 reserved.

15-37-221. Penalty for violations. Any violation of any of the provisions of this part shall be deemed a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 50, L. 1951; R.C.M. 1947, 84-5909; MCA 1981, 15-37-209; redes. 15-37-221 by Code Commissioner, 1983.

CHAPTER 38

RESOURCE INDEMNITY TRUST TAX

Part 1 — General Provisions

Section

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Chapter Cross-References

Resource Indemnity Trust, Art. IX, sec. 2, Mont. Const.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1

General Provisions

15-38-101. Short title. This chapter shall be known and may be cited as "The Montana Resource Indemnity Trust Act".

History: En. 84-7001 by Sec. 1, Ch. 497, L. 1973; R.C.M. 1947, 84-7001.

15-38-102. Legislative policy. It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

History: En. 84-7002 by Sec. 2, Ch. 497, L. 1973; R.C.M. 1947, 84-7002.

15-38-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens.

History: En. 84-7003 by Sec. 3, Ch. 497, L. 1973; amd. Sec. 23, Ch. 52, L. 1977; R.C.M. 1947, 84-7003.

15-38-104. Tax on mineral production. The annual tax to be paid by the person engaged in or carrying on the business of mining, extracting, or producing a mineral shall be $25, together with an additional sum or amount computed on the gross value of product which may have been derived from the business work or operation within this state during the calendar year immediately preceding at the rate of ½ of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

History: En. 84-7006 by Sec. 6, Ch. 497, L. 1973; amd. Sec. 1, Ch. 495, L. 1977; R.C.M. 1947, 84-7006.

15-38-105. Report of gross yield from mines. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall make out a quarterly statement of gross yield of the mineral from each mine owned or worked by that person during the quarter. This form shall be in the form prescribed by the department and shall be signed by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any, and shall be delivered to the department on or before the 60th day following the end of the calendar quarter. The statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents.

History: En. 84-7005 by Sec. 5, Ch. 497, L. 1973; R.C.M. 1947, 84-7005; amd. Sec. 3, Ch. 334, L. 1981; amd. Sec. 1, Ch. 226, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, substituted "quarterly" for "on or before March 31 of each year", and substituted "quarter" for "year preceding January 1 of the year in which the statement is made and the value thereof"; and at end of second sentence, substituted "the 60th day following the end of the calendar quarter" for "March 31".

1981 Amendment: Substituted "signed by the person" for "verified by the oath of the person" in the second sentence.

15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March 1, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time the statement of yield for the last calendar quarter is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine each of the four quarterly statements and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

History: En. 84-7007, 84-7008 by Secs. 7, 8, Ch. 497, L. 1973; R.C.M. 1947, 84-7007, 84-7008; amd. Sec. 1, Ch. 585, L. 1979; amd. Sec. 2, Ch. 226, L. 1983; amd. Sec. 4, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 226 made the following changes: in (1), changed payment deadline from March 31 to March 1; near end of last sentence in (1), after "yield" inserted "for the last calendar quarter"; near beginning of first sentence in (3), inserted "four quarterly" before "statements"; at end of first sentence in (3), deleted "making the statement for the year for which the statement is filed"; and made minor phraseology changes.

Chapter 281, in first sentence of (2), substituted "trust fund of the nonexpendable trust fund type" for "trust account of the trust and legacy fund".

Cross-References

Deficiency assessment procedure, 15-38-110.

Creation of trust fund, 15-38-201.

15-38-107. Procedure in case of failure to file statement. (1) If any person fails, refuses, or neglects to make and file a statement and return it within the time prescribed, the department shall immediately after such time has expired determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the gross yield of the mineral of such person from such business during the calendar quarter immediately preceding the quarter in which the statement is to be filed and shall fix the amount of the tax that would be due to the state if the tax were paid on a quarterly basis from such person for such calendar quarter and shall add to the amount of such tax a penalty of $25 or 2%, whichever is greater.

(2) If any person fails, refuses, or neglects to pay the tax when due, the department shall immediately determine, as nearly as may be possible from any information which the department may be able to obtain, the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add

to the amount a penalty of 8% plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(3) The department shall mail to the person failing to file a quarterly statement or pay any tax a letter setting forth the amount of tax, penalty, and interest due. The letter shall advise that if payment is not received, a warrant for distraint may be filed.

(4) Penalties may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 or the failure to pay the tax required by 15-38-106 is provided to the department.

History: **En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977; R.C.M. 1947, 84-7012(1) thru (3); amd. Sec. 21, Ch. 439, L. 1981; amd. Sec. 3, Ch. 226, L. 1983.**

Compiler's Comments

1983 Amendment: Near middle of (1), substituted "gross yield of the mineral" for "total gross value of product"; substituted "quarter" for "year" three times; after "quarter in which the" substituted "statement is to be filed" for "tax is to be paid"; after "due to the state" inserted "if the tax were paid on a quarterly basis"; at end of (1), substituted "$25 or 2%, whichever is greater" for "10% thereof"; at beginning of (2), inserted "If any person . . . penalty of 8%"; in (3), substituted "person failing to file a quarterly statement or" for "person required to file an annual statement and"; in (4), substituted "Penalties" for "The 10% penalty"; after "15-38-105" inserted "or the failure to pay the tax required by 15-38-106"; and made minor phraseology changes.

1981 Amendment: Substituted the last sentence of (2) for a provision that the taxpayer shall pay the amount of tax due within 15 days of receiving the letter.

15-38-108. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded.

History: **En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977; R.C.M. 1947, 84-7012(4); amd. Sec. 22, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-38-109. Restricted access to records. The information furnished by the producer to the department for the purpose of this chapter shall be treated as provided in 15-31-507.

History: **En. Sec. 13, Ch. 497, L. 1973; R.C.M. 1947, 84-7013.**

15-38-110. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983.**

15-38-111. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-38-110 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-38-112. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever

period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

Part 2

Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund. For the purpose of carrying out this chapter, there is a resource indemnity trust fund in the nonexpendable trust fund type. The resource indemnity fund shall be credited with all moneys received as herein provided.

History: En. 84-7004 by Sec. 4, Ch. 497, L. 1973; R.C.M. 1947, 84-7004; amd. Sec. 5, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, substituted "trust fund in the nonexpendable trust fund type" for "trust account in the trust and legacy fund"; and in second sentence, changed "account" to "fund".

15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

(3) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust fund must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6. Any funds remaining unexpended at the end of each fiscal year will revert to the resource indemnity trust interest account.

History: En. 84-7009 by Sec. 9, Ch. 497, L. 1973; R.C.M. 1947, 84-7009; amd. Sec. 44, Ch. 505, L. 1981; amd. Sec. 6, Ch. 241, L. 1983; amd. Sec. 6, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 241 inserted (3).

Chapter 281, throughout section, changed references to resource indemnity trust "account" to references to resource indemnity trust "fund"; and in (2), substituted "state special revenue account" for "earmarked account".

Commissioner Correction: In third and fourth sentences of (1), references to "account" were apparently overlooked by Chapter 281. The apparent intent was that "account" become "fund" and the Code Commissioner has changed the references accordingly. The Code Commissioner also changed "resource indemnity trust account" to "resource indemnity trust fund" in (3) pursuant to sec. 48, Ch. 281, L. 1983.

1981 Amendment: Added subsection (2).

Cross-References

Resource Indemnity Trust, Art. IX, sec. 2, Mont. Const.

Board of Investments, 2-15-1005.

Use of funds to reclaim abandoned wells or holes, 82-10-402.

15-38-203. Purpose of fund usage. Any funds made available under this chapter shall be used and expended to improve the total environment and rectify damage thereto.

History: En. 84-7010 by Sec. 10, Ch. 497, L. 1973; R.C.M. 1947, 84-7010.

CHAPTERS 39 THROUGH 49

RESERVED

CHAPTER 50

PUBLIC CONTRACTOR'S FEES AND TAX

Part 1 — General Provisions (Renumbered by Code Commissioner, 1983)

Section

Part 2 — Tax on Contractors

15-50-201. Renumbered 37-71-201 by Code Commissioner, 1983.
15-50-202. Renumbered 37-71-202 by Code Commissioner, 1983.
15-50-203. Renumbered 37-71-203 by Code Commissioner, 1983.
15-50-204. Renumbered 37-71-204 by Code Commissioner, 1983.
15-50-205. Additional license tax imposed.
15-50-206. Withholding license fee from payments — refunds.
15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.
15-50-208 through 15-50-210 reserved.
15-50-211. Renumbered 37-71-211 by Code Commissioner, 1983.
15-50-212. Renumbered 37-71-212 by Code Commissioner, 1983.
15-50-213. Renumbered 37-71-213 by Code Commissioner, 1983.

Part 3 — Contractor's Tax Return

15-50-301. Rule for contractor's return.
15-50-302. Renumbered 37-71-301 by Code Commissioner, 1983.
15-50-303. Renumbered 37-71-302 by Code Commissioner, 1983.

Part 1

General Provisions (Renumbered by Code Commissioner, 1983)

Part Compiler's Comments

Renumbered Sections:

15-50-101. Renumbered 37-71-101 by Code Commissioner, 1983.

15-50-102. Renumbered 37-71-102 by Code Commissioner, 1983.

15-50-103. Renumbered 37-71-103 by Code Commissioner, 1983.

15-50-104. Renumbered 37-71-104 by Code Commissioner, 1983.

15-50-105. Renumbered 37-71-105 by Code Commissioner, 1983.

Part 2

Tax on Contractors

15-50-201. Renumbered 37-71-201 by Code Commissioner, 1983.

15-50-202. Renumbered 37-71-202 by Code Commissioner, 1983.

15-50-203. Renumbered 37-71-203 by Code Commissioner, 1983.

15-50-204. Renumbered 37-71-204 by Code Commissioner, 1983.

15-50-205. Additional license tax imposed. (1) In addition to the fees enumerated in 37-71-204, each public contractor shall pay to the department of revenue an additional license fee in a sum equal to 1% of the gross receipts, as defined in 37-71-101, from public contracts during the income year for which the license is issued.

(2) The additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in 37-71-101(4).

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(part); amd. Sec. 7, Ch. 240, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "pay to the" substituted "department of revenue" for "state"; after "license is issued" deleted "provided, however, that the additional license fee hereby imposed shall not be paid upon or collectable from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on February 28, 1967"; and at end of (2), corrected internal reference.

15-50-206. Withholding license fee from payments — refunds. (1) The prime contractor shall withhold the additional 1% license fee from payments to his subcontractors and inform the department of revenue on prescribed forms of the amount of the additional 1% license fee in his account to be allocated and transferred to the subcontractor. The notification to transfer portions of the additional 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this chapter, a penalty computed at the rate of 10% of the additional 1% license fee withheld from subcontractors shall be due from the prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in 37-71-101(4) for whom the contractor is performing public work

shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit such moneys to the department of revenue. In the event that the 1% of gross receipts, as defined in 37-71-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 37-71-101, withheld or paid by any contractor hereunder shall be refunded by the department of revenue at the end of the income year upon written application therefor.

History: (1)En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; Sec. 84-3505, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 195, L. 1967; amd. Sec. 144, Ch. 516, L. 1973; Sec. 84-3513, R.C.M. 1947; R.C.M. 1947, 84-3505(part), 84-3513; amd. Sec. 8, Ch. 240, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), corrected internal reference; and in (3), after "department" inserted "of revenue".

15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes or light vehicle license fees, as provided by 61-3-532, paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the personal property tax or light vehicle license fee credit against the license fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967; R.C.M. 1947, 84-3514; amd. Sec. 22, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or light vehicle license fees, as provided by 61-3-532" after "Personal property taxes" at the beginning of (2); and inserted "or light vehicle license fee" after "the personal property tax" in the middle of the second sentence of (2).

15-50-208 through 15-50-210 reserved.

15-50-211. Renumbered 37-71-211 by Code Commissioner, 1983.

15-50-212. Renumbered 37-71-212 by Code Commissioner, 1983.

15-50-213. Renumbered 37-71-213 by Code Commissioner, 1983.

Part 3

Contractor's Tax Return

15-50-301. Rule for contractor's return. The department of revenue shall establish rules requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part).

15-50-302. Renumbered 37-71-301 by Code Commissioner, 1983.

15-50-303. Renumbered 37-71-302 by Code Commissioner, 1983.

CHAPTER 51

ELECTRIC ENERGY PRODUCERS' LICENSE TAX

Part 1 — General Provisions

Section
15-51-101. Rate of tax — electrical energy producers.
15-51-102. Payment of tax — not to be set out on customers' bills.
15-51-103. Disposition of revenue — interest on delinquency.
15-51-104. Inspection of books of producer.
15-51-105. Repealed.
15-51-106. Future producers to comply.
15-51-107 and 15-51-108 reserved.
15-51-109. Deficiency assessment — hearing — interest.
15-51-110. Credit for overpayment — interest on overpayment.
15-51-111. Procedure to compute tax in absence of statement.
15-51-112. Warrant for distraint.
15-51-113. Penalty for violation — enforcement.
15-51-114. Statute of limitations.

Part 1

General Provisions

Part Cross-References
Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

15-51-101. Rate of tax — electrical energy producers. In addition to the license tax now provided by law, each person or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through waterpower or by any other means, for barter, sale, or exchange (and hereinafter referred to as the "producer") shall on or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and

December 31, render a statement to the department of revenue showing the gross amount, except for actual and necessary plant use, required to produce the energy of electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax thereon in the sum of $.0002 per kilowatt hour on all such electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time hereinafter provided.

History: **En. Sec. 1, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.1, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1, Ch. 391, L. 1971; amd. Sec. 69, Ch. 516, L. 1973; amd. Sec. 4, Ch. 52, L. 1977; amd. Sec. 1, Ch. 401, L. 1977; R.C.M. 1947, 84-1601.**

Cross-References

Credit for loans by certain utilities for energy-saving purposes, 15-32-107.

Exemption of rural electric cooperatives, 35-18-503.

15-51-102. Payment of tax — not to be set out on customers' bills. The license tax shall be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. No bill, statement, or account rendered or given any customer by any organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter.

History: **En. Sec. 2, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.2, R.C.M. 1935; amd. Sec. 2, Ch. 5, Ex. L. 1969; amd. Sec. 2, Ch. 401, L. 1977; R.C.M. 1947, 84-1602.**

15-51-103. Disposition of revenue — interest on delinquency. The department of revenue shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent, and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty shall be charged.

History: **En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20(F), Ch. 109, L. 1935; re-en. Sec. 2343.3, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941; amd. Sec. 70, Ch. 516, L. 1973; amd. Sec. 3, Ch. 401, L. 1977; R.C.M. 1947, 84-1603.**

Cross-References

Disposition of tax proceeds, 15-1-501.

15-51-104. Inspection of books of producer. The books and records of such producer shall be subject to inspection by the department of revenue, its agents or employees, during reasonable hours.

History: **En. Sec. 5, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.5, R.C.M. 1935; amd. Sec. 72, Ch. 516, L. 1973; amd. Sec. 4, Ch. 401, L. 1977; R.C.M. 1947, 84-1605.**

15-51-105. Repealed. Sec. 35, Ch. 581, L. 1979.

History: **En. Sec. 8, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.8, R.C.M. 1935; amd. Sec. 74, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1977; R.C.M. 1947, 84-1608.**

15-51-106. Future producers to comply. Any producer of electricity or electrical energy referred to in 15-51-101 who shall hereafter engage in the generation, production, or manufacture of electricity or electrical energy shall immediately upon purchasing or acquiring the plant or installing equipment therefor comply with the requirements of this chapter.

History: En. Sec. 7, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 20, L. 1935; re-en. Sec. 2343.7, R.C.M. 1935; R.C.M. 1947, 84-1607.

15-51-107 and 15-51-108 reserved.

15-51-109. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983.

15-51-110. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-51-109 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must further contain a statement that if payment is not made, a warrant for distraint may be filed. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department.

History: **En. 84-1610 by Sec. 5, Ch. 401, L. 1977; R.C.M. 1947, 84-1610; amd. Sec. 28, Ch. 581, L. 1979; amd. Sec. 23, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within such time, a lien may be filed" at the end of the second sentence; deleted sentence before the last sentence that required payment within 15 days of receiving the letter.

15-51-112. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: **En. 84-1611 by Sec. 6, Ch. 401, L. 1977; R.C.M. 1947, 84-1611; amd. Sec. 24, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-51-113. Penalty for violation — enforcement. Any producer referred to in 15-51-101 who shall violate any of the provisions of this chapter or who shall fail to pay the license tax herein provided for or any part thereof when due shall be liable for three times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of competent jurisdiction in the name of the state of Montana, and in such suit, upon application of the state, an injunction may be issued, without requiring any bond, restraining the defendant from continuing to produce electricity or electrical energy so long as the tax due hereunder from said defendant remains delinquent.

History: **En. Sec. 9, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.9, R.C.M. 1935; R.C.M. 1947, 84-1609.**

Cross-References

Execution of judgment, Title 25, ch. 13.

15-51-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: **En. Sec. 1, Ch. 194, L. 1983.**

CHAPTER 52

COLLECTION OF TRANSPORTATION AND COMMUNICATIONS LICENSE TAXES

(Repealed. Sec. 22, Ch. 294, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-52-101 through 15-52-103. En. 84-7701, 84-7702, 84-7705 by Secs. 1, 2, 3, Ch. 36, L. 1977; R.C.M. 1947, 84-7701, 84-7702, 84-7705.

CHAPTER 53

TELEPHONE COMPANY LICENSE TAX

Part 1 — General Provisions

Section

15-53-101. Rate of license tax on telephone companies — itemized pass through prohibited.
15-53-102. Statement required of telephone companies.
15-53-103. Taxpayer records.
15-53-104. Department rules.
15-53-105. Deficiency assessment — hearing — interest.
15-53-106. Credit for overpayment — interest on overpayment.
15-53-107 through 15-53-110 reserved.

15-53-111. Penalty and interest for delinquency — waiver.
15-53-112. Estimation of tax upon failure to file statement or pay tax — notice.
15-53-113. Warrant for distraint.
15-53-114. Disposal of license taxes.
15-53-115. Statute of limitations.

Chapter Cross-References

Dispositon of tax proceeds, 15-1-501.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Part 1

General Provisions

15-53-101. Rate of license tax on telephone companies — itemized pass through prohibited. (1) There is hereby levied and shall be collected an annual tax of 1.725% of the gross income in excess of $250 quarterly derived from any telephone business within this state, including the transmission of telephone messages in this state over telephone lines or by microwave electronic equipment in this state owned by any person, provided, however, that no bill, statement, or account rendered or given any customer shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter.

(2) Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 in each year.

History: **En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971; R.C.M. 1947, 84-2601.**

Cross-References

Exemption for rural telephone cooperatives, 35-18-503.

15-53-102. Statement required of telephone companies. (1) Each and every person, liable to tax under this chapter engaged in carrying on such telephone business in this state shall, within 60 days after the end of each quarter, make and file with the department of revenue a statement in such form as the department may require and prescribe, showing the total gross income of such person derived from the telephone business within this state, including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of but terminating within this state and from those originating within but terminating outside of this state, during the preceding quarter and containing such other information as the department may require, and shall accompany such statement with the payment to the department of a license tax in the amount equal to 1.725%.

(2) The department may grant a reasonable extension of time for filing the statement upon good cause shown.

History: **En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971; amd. Sec. 138, Ch. 516, L. 1973; R.C.M. 1947, 84-2602; amd. Sec. 1, Ch. 294, L. 1979.**

15-53-103. Taxpayer records. Each person liable to tax under this chapter shall keep a record in such form as the department of revenue shall require, showing the total gross receipts as herein described and such other information as the department may require.

History: En. Sec. 5, Ch. 94, L. 1937; amd. Sec. 140, Ch. 516, L. 1973; R.C.M. 1947, 84-2605.

15-53-104. Department rules. The department of revenue shall have the power and it shall be its duty from time to time to adopt, publish, and enforce such rules not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this chapter.

History: En. Sec. 3, Ch. 94, L. 1937; amd. Sec. 139, Ch. 516, L. 1973; R.C.M. 1947, 84-2603.

15-53-105. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983.

15-53-106. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-53-105 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-53-107 through 15-53-110 reserved.

15-53-111. Penalty and interest for delinquency — waiver. (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each calendar quarter. The department of revenue shall add to the amount of all delinquent telephone company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-102 or pay the tax due is provided to the department.

History: **En Sec. 2, Ch. 294, L. 1979.**

15-53-112. Estimation of tax upon failure to file statement or pay tax — notice. (1) If a person fails, neglects, or refuses to file the statement required by 15-53-102 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department of revenue shall proceed to inform itself as best it may regarding the total gross income of the person from its telephone business within this state during the quarter.

(2) The department shall compute the amount of license taxes due from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a warrant for distraint may be filed.

History: **En Sec. 3, Ch. 294, L. 1979; amd. Sec. 25, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "a warrant for distraint may be filed" for "within 15 days a lien may be filed" at the end of (2).

15-53-113. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: **En Sec. 4, Ch. 294, L. 1979; amd. Sec. 26, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-53-114. Disposal of license taxes. License taxes collected under this chapter shall be credited to the general fund of the state.

History: En Sec. 5, Ch. 294, L. 1979.

15-53-115. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

CHAPTER 54

EXPRESS COMPANY LICENSE TAX

Part 1 — General Provisions

Section

15-54-101. Definition — express companies.
15-54-102. Rate of express company license tax — proceeds to general fund.
15-54-103. Statements required from express companies.
15-54-104. Computing express company gross receipts.
15-54-105. Exemption from payment of other tax.
15-54-106 through 15-54-110 reserved.
15-54-111. Penalty and interest for delinquency — waiver.
15-54-112. Estimation of tax upon failure to file statement — notice.
15-54-113. Warrant for distraint.

Chapter Cross-References

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Part 1

General Provisions

15-54-101. Definition — express companies. Any person or persons, joint-stock association, or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state or any part thereof money, packages, gold, silver plate, or any articles by express service, as distinguished from the ordinary freight lines of transportation of merchandise and property in this state, shall be deemed to be an express company.

History: En. Sec. 1, Ch. 87, L. 1917; re-en. Sec. 2305, R.C.M. 1921; re-en. Sec. 2305, R.C.M. 1935; R.C.M. 1947, 84-1701.

15-54-102. Rate of express company license tax — proceeds to general fund. (1) The department of revenue shall compute the amount of license tax due by taking 4% of the amount fixed as the gross receipts of such express company for business done within the state for the year next preceding April 1. The department shall on or before September 1 mail to each person making and filing the statement required by 15-54-103 a written notice of the amount of license tax due and payable on or before the September 30 immediately following. Nothing contained in this chapter shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law.

(2) License taxes collected under this chapter shall be credited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R.C.M. 1921; re-en. Sec. 2311, R.C.M. 1935; amd. Sec. 78, Ch. 516, L. 1973; R.C.M. 1947, 84-1707; amd. Sec. 6, Ch. 294, L. 1979.

Cross-References

Disposition of tax proceeds, 15-1-501.

15-54-103. Statements required from express companies. (1) Any express company, as defined in 15-54-101, doing business in this state must, not later than July 1, make and file with the department of revenue a statement in such form as the department may prescribe. The statement must show the following:

(a) the name of the person or persons, association, or corporation;

(b) under the laws of what state or country organized;

(c) the location of its principal office;

(d) the name and post-office address of the president, secretary, auditor, treasurer, superintendent, and general manager;

(e) the name and post-office address of the chief officer or managing agent of the company in this state;

(f) the entire receipts (including all sums entered or charged, whether actually received or not) for business done by such company within this state, including its proportion of gross receipts for business done by such company within the state in connection with other companies;

(g) such other facts and information as the department may require in the form of return prescribed by it.

(2) The department may grant a reasonable extension of time for the filing of a statement upon good cause shown.

History: En. Sec. 2, Ch. 87, L. 1917; re-en. Sec. 2306, R.C.M. 1921; re-en. Sec. 2306, R.C.M. 1935; amd. Sec. 75, Ch. 516, L. 1973; R.C.M. 1947, 84-1702; amd. Sec. 7, Ch. 294, L. 1979.

15-54-104. Computing express company gross receipts. The department of revenue shall proceed to ascertain and determine on or before September 1 in each year the entire gross receipts of each of said express companies for business done within the state for the year next preceding April 1, and the amount so ascertained by the department shall be held and deemed to be the gross receipts of such express company for business done within the state for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917; re-en. Sec. 2307, R.C.M. 1921; re-en. Sec. 2307, R.C.M. 1935; amd. Sec. 76, Ch. 516, L. 1973; R.C.M. 1947, 84-1703; amd. Sec. 8, Ch. 294, L. 1979.

15-54-105. Exemption from payment of other tax. No other license or franchise tax shall be levied against any express company except the license tax provided by this chapter.

History: En. Sec. 9, Ch. 87, L. 1917; re-en. Sec. 2313, R.C.M. 1921; re-en. Sec. 2313, R.C.M. 1935; R.C.M. 1947, 84-1709.

15-54-106 through 15-54-110 reserved.

15-54-111. Penalty and interest for delinquency — waiver. (1) License taxes assessed under this chapter become delinquent if not paid on or before September 30 following the date assessed. The department of revenue shall add to the amount of all delinquent express company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the license taxes become delinquent until paid.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-54-103 or pay the tax due is provided to the department.

History: En. Sec. 10, Ch. 294, L. 1979.

15-54-112. Estimation of tax upon failure to file statement — notice. (1) If a person fails, neglects, or refuses to make and file the statement required by 15-54-103, the department of revenue shall determine as nearly as possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information that the department may be able to obtain the total gross receipts of the person from the business in this state during the year next preceding April 1.

(2) The department shall prepare a statement showing the amount of the gross receipts and shall compute and assess the amount of license taxes due from the person and shall give notice to the person in the same manner as though the statement had been filed on time and shall proceed to collect the license tax, if delinquent, together with penalty and interest as provided for other delinquencies. The notice shall advise that if payment is not made, the department may file a warrant for distraint.

History: En. Sec. 9, Ch. 294, L. 1979; amd. Sec. 27, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Added the last sentence to (2).

15-54-113. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 11, Ch. 294, L. 1979; amd. Sec. 28, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

CHAPTER 55

FREIGHT LINE COMPANY LICENSE TAX

Part 1 — General Provisions

Section

15-55-101. Definitions.
15-55-102. Rate of license tax on freight line companies.
15-55-103. Withholding tax, payment, hearings, and ad valorem basis.
15-55-104. Computation of tax.
15-55-105. Ad valorem basis as maximum tax.
15-55-106. Appeals and refunds.
15-55-107. Actions to recover delinquent taxes and penalties — additional taxes.
15-55-108. Penalty and interest for delinquency — waiver.
15-55-109. Warrant for distraint.
15-55-110. Disposal of license taxes.
15-55-111. Statute of limitations.

Chapter Cross-References

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Part 1

General Provisions

15-55-101. Definitions. The following words and phrases, when used in this chapter, shall have the following definitions:

(1) The term "department" shall mean the state department of revenue of the state of Montana.

(2) "Freight line companies" means any person or persons, joint-stock company, association, or corporation, wherever organized or incorporated, not being the owner, lessee, or operator of any railroad, engaged in the business of operating cars or engaged in the business of furnishing or leasing cars, not otherwise listed for taxation in Montana, for the transportation of freight (whether said cars be owned by such company or any other person or company) over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such company, whether such cars be termed flat, coal, ore, tank, stock, gondola, furniture, or refrigerator cars or by some other name.

(3) The terms "gross earnings" or "total gross earnings" shall be construed to mean all earnings on business beginning and ending within this state and a proportion, based upon the proportion of mileage within the state to the entire mileage over which such business is done, of all earnings on interstate business passing through, into, or out of this state.

History: En. Sec. 1, Ch. 137, L. 1949; amd. Sec. 152, Ch. 516, L. 1973; R.C.M. 1947, 84-4818.

15-55-102. Rate of license tax on freight line companies. Every freight line company shall pay annually for each calendar year a sum in the nature of a tax in the amount of 5 ½% of the total gross earnings received from all sources by reason of the use or operation of such cars within this state by such freight line company which shall be in lieu of all other taxes upon such property of any freight line company so paying the same, provided for the purpose of taxation, all cars used exclusively within the state or used partially within and partially without the state are hereby declared to have situs within the state, the value thereof for such taxation to be determined as provided for in this chapter.

History: En. Sec. 2, Ch. 137, L. 1949; amd. Sec. 1, Ch. 346, L. 1969; R.C.M. 1947, 84-4819.

15-55-103. Withholding tax, payment, hearings, and ad valorem basis. (1) Every railroad company so using or leasing said cars, upon payment therefor to such company, shall withhold from such payment 5 ½% of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, each year, such railroad company shall make and file with the department a consolidated statement, in a form to be prescribed by the department, showing the amount of such payments for the next preceding calendar year ending December 31 and the amounts so withheld and due the state.

(2) For good cause the department may grant a reasonable extension for filing, but not to exceed 30 days.

(3) Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state. Upon receipt of such payment, the department shall issue its receipt in triplicate, one copy of which shall be mailed to such railroad company, one to the freight line company for which such tax is paid, and one to be retained in the office of the department. The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax.

(4) If any railroad company shall fail to make or file such report or if the department be dissatisfied with any report filed, the department shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever sources to which it has access the gross earnings of such freight line company from the use or operation of such cars within the borders of this state. In conducting such hearing and investigation, the department shall have power by subpoena to require officers, agents, employees, or receivers of such railroad company or of such freight line company to attend before the department and to bring with him or them for inspection by the department any books, papers, or documents in his or their possession or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail,

neglect, or refuse to attend before the department when subpoenaed so to do or who shall fail, neglect, or refuse to bring with him and submit for inspection by the department any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state or who shall refuse to testify or refuse to answer any question which may be asked him concerning the organization or business shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $1,000 or be imprisoned in the county jail for not less than 30 days or more than 6 months.

(5) Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between 5 ½% of all gross earnings in this state and the amounts withheld and remitted to the state by railroads and shall be liable for the payment of any additional taxes which the department may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

History: En. Sec. 3, Ch. 137, L. 1949; amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971; amd. Sec. 153, Ch. 516, L. 1973; R.C.M. 1947, 84-4820.

15-55-104. Computation of tax. Upon the filing of the reports herein provided for, the department shall compute and determine the amount of the tax and, on or before May 1, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient, and such railroad company shall be liable for any additional tax found to be owing the state.

History: En. Sec. 4, Ch. 137, L. 1949; amd. Sec. 154, Ch. 516, L. 1973; amd. Sec. 4, Ch. 36, L. 1977; R.C.M. 1947, 84-4821.

15-55-105. Ad valorem basis as maximum tax. It is hereby declared to be the intention of the legislature that the tax herein imposed be not greater than the amount of tax such freight line company would pay if its cars were taxed on an ad valorem basis. No tax other than as in this chapter imposed shall be assessed against the business or income of any such freight line company.

History: En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973; R.C.M. 1947, 84-4822(part).

15-55-106. Appeals and refunds. (1) Any such freight line company or railroad company, on or before June 1 of the year in which the tax herein imposed has been paid, may file written complaint with the state tax appeal board concerning the correctness of the rate used or the correctness of the amount of the tax imposed or any other matter affecting the complainant under the provisions of this chapter.

(2) Upon filing such complaint, the state tax appeal board shall set the same for hearing and shall give written notice thereof to the complainant at least 10 days before the date set for hearing thereon. Upon the hearing of any such complaint, the state tax appeal board shall take testimony to determine whether the amount of the tax, as computed and determined by the department of revenue, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana if assessed and taxed on an ad valorem basis. In such cases the state tax appeal board shall have the power and it shall be its duty to lower

or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the state tax appeal board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess.

(3) Within 6 months after such determination, the claimant may present to the department a sworn claim for such refund, setting forth the amount thereof. The state auditor shall draw his warrant upon the state treasurer for the amount of such claim, and the same shall be paid out of the freight line company tax fund created by this chapter in the same manner as other claims against the state are paid.

(4) In order to determine the amount of tax such freight line company would pay, the department may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the 12-month period ending December 31 of the preceding year and may then apply to such value the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities, and other taxing subdivisions for state, county, school and municipal, and other purposes.

History: **En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973; R.C.M. 1947, 84-4822(part).**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

Definition of "school district", 20-15-403.

15-55-107. Actions to recover delinquent taxes and penalties — additional taxes. (1) If the taxes and penalties provided for in this chapter to be paid by the railroad company on the property of such freight line company remain unpaid more than 90 days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

(2) In the event the state tax appeal board, under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, finds, after a hearing as herein provided, taxes due from any such freight line company in excess of the 5 ½ % of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined is due and payable by the freight line company upon which the assessment is made, and if such tax remains unpaid for more than 90 days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

History: **En. Sec. 7, Ch. 137, L. 1949; amd. Sec. 98, Ch. 405, L. 1973; R.C.M. 1947, 84-4824; amd. Sec. 29, Ch. 581, L. 1979.**

Cross-References
State Tax Appeal Board, Title 15, ch. 2.
Prejudgment attachment, Title 27, ch. 18.

15-55-108. Penalty and interest for delinquency — waiver. (1) License taxes due under this chapter become delinquent if not paid by March 1. The department shall add to the amount of all delinquent freight line company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-55-103 or pay the tax due is provided to the department.

History: **En. Sec. 12, Ch. 294, L. 1979.**

15-55-109. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: **En. Sec. 13, Ch. 294, L. 1979; amd. Sec. 29, Ch. 439, L. 1981.**

Compiler's Comments
1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-55-110. Disposal of license taxes. License taxes collected under this chapter shall be credited to the general fund of the state.

History: **En. Sec. 14, Ch. 294, L. 1979.**

Cross-References
Disposition of tax proceeds, 15-1-501.

15-55-111. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: **En. Sec. 1, Ch. 194, L. 1983.**

CHAPTER 56

SLEEPING CAR COMPANY LICENSE TAX

Part 1 — General Provisions

Section
15-56-101. Definitions.
15-56-102. Rate of license tax on sleeping car companies — proceeds to general fund.
15-56-103. Report required of sleeping car companies.
15-56-104. Department to set valuation.
15-56-105. Method of determining valuation.
15-56-106. Notice of hearing concerning valuation — right to appear and be heard.
15-56-107. Tax receipt as license to do business.
15-56-108. Extension for filing report.
15-56-109 and 15-56-110 reserved.
15-56-111. Penalty and interest for delinquency — waiver.
15-56-112. Estimation of tax upon failure to file return.
15-56-113. Warrant for distraint.

Part 1

General Provisions

15-56-101. Definitions. (1) The term "department", when used in this chapter, shall mean the department of revenue.

(2) Any person, company, association, or corporation (not being a railroad company or a lessee of a railroad company), wherever organized or incorporated, owning and operating or operating any cars known as dining, buffet, chair, parlor, palace, or sleeping cars which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a "sleeping car company" for the purposes of this chapter.

History: **En. Sec. 1, Ch. 64, L. 1923; re-en. Sec. 2315.1, R.C.M. 1935; amd. Sec. 119, Ch. 516, L. 1973; amd. Sec. 5, Ch. 52, L. 1977; R.C.M. 1947, 84-2301.**

15-56-102. Rate of license tax on sleeping car companies — proceeds to general fund. (1) The department shall compute the amount of license tax due at the rate of 1 ½ % of the valuation determined under 15-56-105. The department shall mail to each person making and filing the report required by 15-56-103 a written notice of the value of the property subject to the license tax in this state and the amount of tax due which is payable within 60 days from the date of the notice.

(2) License taxes collected under this chapter shall be credited to the general fund of the state.

History: En. Sec. 6, Ch. 64, L. 1923; re-en. Sec. 2315.6, R.C.M. 1935; amd. Sec. 124, Ch. 516, L. 1973; R.C.M. 1947, 84-2306; amd. Sec. 15, Ch. 294, L. 1979.

15-56-103. Report required of sleeping car companies. Every sleeping car company shall annually, on or before June 1 and covering the preceding calendar year, make and file a report. The department shall furnish forms upon which to make such reports. The report must contain:

(1) the name of the company;

(2) the nature of the company; whether a person, agent, trustee, lessee, receiver, or other person or a joint-stock company, partnership, association, or corporation;

(3) the location of its principal office and under the laws of what state or country organized and when;

(4) the name and address of the president, secretary, auditor, treasurer, and superintendent or general manager;

(5) the name and address of its chief officer or managing agent in Montana;

(6) its capital stock:

(a) the amount authorized;

(b) the amount issued;

(c) the amount of capital stock invested in its sleeping car business;

(d) the number of shares of stock:

(i) outstanding;

(ii) not issued;

(iii) treasury; and whether common or preferred;

(7) the amount of the bonds outstanding, when issued, when due, and the rate of interest of each issue;

(8) the par market value of the stocks and bonds issued and outstanding;

(9) the whole length and the names of railroad lines over which its equipment was used in the state;

(10) the total equipment mileage and the equipment mileage within this state;

(11) the gross and net earnings during the year;

(12) such other facts and information as such company or the department may deem material upon the question of the true and full value of said property within this state.

History: En. Sec. 2, Ch. 64, L. 1923; re-en. Sec. 2315.2, R.C.M. 1935; amd. Sec. 120, Ch. 516, L. 1973; R.C.M. 1947, 84-2302; amd. Sec. 16, Ch. 294, L. 1979.

15-56-104. Department to set valuation. The department of revenue shall carefully consider all reports made pursuant to 15-56-103 and all other facts and evidence collected and available and shall fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon as hereinafter provided.

History: En. Sec. 3, Ch. 64, L. 1923; re-en. Sec. 2315.3, R.C.M. 1935; amd. Sec. 121, Ch. 516, L. 1973; R.C.M. 1947, 84-2303.

15-56-105. Method of determining valuation. (1) The department shall find, ascertain, and determine the actual value in money of the entire amount of capital stock of each such company invested in its sleeping car business, and when the value of the capital stock cannot be reliably ascertained, it shall find, ascertain, and determine the value of the entire property used in said business. From the amount so obtained, it shall deduct the actual value of its real estate situate without this state not used in said business and also the actual value of all its personal property not used in said business. The remainder shall be taken and considered as the actual value of the capital stock of such company invested or used in its business.

(2) The department shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in 15-56-106.

History: En. Sec. 4, Ch. 64, L. 1923; re-en. Sec. 2315.4, R.C.M. 1935; amd. Sec. 122, Ch. 516, L. 1973; R.C.M. 1947, 84-2304.

15-56-106. Notice of hearing concerning valuation — right to appear and be heard. The department shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the department may make such changes in its valuation as shall appear just and reasonable.

History: En. Sec. 5, Ch. 64, L. 1923; re-en. Sec. 2315.5, R.C.M. 1935; amd. Sec. 123, Ch. 516, L. 1973; R.C.M. 1947, 84-2305.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested case procedures, Title 2, ch. 4, part 6.

15-56-107. Tax receipt as license to do business. The receipt by the department of the license tax paid in full shall serve as a license to the sleeping car company to conduct its business in the state during the year when issued.

History: En. Sec. 10, Ch. 64, L. 1923; re-en. Sec. 2315.10, R.C.M. 1935; R.C.M. 1947, 84-2310; amd. Sec. 18, Ch. 294, L. 1979.

15-56-108. Extension for filing report. The department may grant a reasonable extension of time for filing the report required by 15-56-103 upon good cause shown.

History: En. Sec. 17, Ch. 294, L. 1979.

15-56-109 and 15-56-110 reserved.

15-56-111. Penalty and interest for delinquency — waiver. (1) License taxes assessed under this chapter become delinquent if not paid within 60 days following the date assessed. The department shall add to the amount of all delinquent sleeping car company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the taxes become delinquent until paid.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the report required by 15-56-103 or pay the tax due is provided to the department.

History: **En. Sec. 19, Ch. 294, L. 1979.**

15-56-112. Estimation of tax upon failure to file return. (1) If a person fails to make the report required by 15-56-103, the department shall determine the value of the property of that person in this state from any information that the department may be able to obtain.

(2) The department shall prepare a statement showing the amount of the valuation determined and shall compute and assess the amount of license taxes due and shall give notice to the person failing to make the report in the same manner as though a report had been filed as required by 15-56-103. The notice shall advise that if payment is not made, the department may file a warrant for distraint.

History: **En. Sec. 20, Ch. 294, L. 1979; amd. Sec. 30, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Added the last sentence to (2).

15-56-113. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: **En. Sec. 21, Ch. 294, L. 1979; amd. Sec. 31, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

CHAPTER 57

STORE LICENSES

Part 1 — General Provisions

Section

15-57-101. Store defined.
15-57-102. License to operate store — exception for grain merchandisers.
15-57-103. Application and fee for license.
15-57-104. Review of application — issuance of license.
15-57-105. Expiration and renewal of licenses.
15-57-106. License fees for retail stores.
15-57-107. License fees for wholesale stores.
15-57-108. Application of chapter.
15-57-109. Employment of staff — disposal of license money.
15-57-110. Penalty.

Part 1

General Provisions

15-57-101. Store defined. The term "store" as used in this chapter shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained, or controlled by the same person or group, in which goods, wares, or merchandise of any kind are sold, either at retail or wholesale and subject to the classification contained in 15-57-106 and 15-57-107. Vending machines shall not be considered as places of business per se and are not required to be licensed under the provisions of this chapter.

History: En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971; amd. Sec. 5, Ch. 240, L. 1973; amd. Sec. 10, Ch. 52, L. 1977; R.C.M. 1947, 84-2410.

15-57-102. License to operate store — exception for grain merchandisers. (1) It shall be unlawful for any person to open, establish, operate, or maintain any store or stores in this state without first having obtained a license to do so from the department of revenue as hereinafter provided.

(2) A person establishing or operating any store in this state engaged solely in the business of grain merchandising and who is licensed under Title 80, chapter 4, part 2, is exempt from the provisions of this chapter as to such store.

History: En. Sec. 1, Ch. 163, L. 1939; amd. Sec. 128, Ch. 516, L. 1973; amd. Sec. 6, Ch. 52, L. 1977; R.C.M. 1947, 84-2401; amd. Sec. 1, Ch. 132, L. 1979.

15-57-103. Application and fee for license. (1) Any person or group desiring to open, establish, operate, or maintain a store in the state of Montana prior to September 1 of that calendar year shall apply to the department of revenue for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the department and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver, or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the department may require.

(2) If the applicant desires to open, establish, operate, or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open, or establish each such store.

(3) Each such application shall be accompanied by the license fee as prescribed in 15-57-106 and 15-57-107.

History: En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971; amd. Sec. 1, Ch. 240, L. 1973; amd. Sec. 129, Ch. 516, L. 1973; amd. Sec. 7, Ch. 52, L. 1977; R.C.M. 1947, 84-2402.

15-57-104. Review of application — issuance of license. (1) As soon as practicable after the receipt of any such application, the department of revenue shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the department shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

(2) If an application is found to be satisfactory and if the filing and license fee as herein prescribed shall have been paid, the department shall issue to the applicant a license for each store for which an application for a license shall have been made.

(3) Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued.

History: En. Sec. 3, Ch. 163, L. 1939; amd. Sec. 130, Ch. 516, L. 1973; R.C.M. 1947, 84-2403.

15-57-105. Expiration and renewal of licenses. (1) All licenses shall be issued so as to expire December 31 of each calendar year. On or before December 31 of each calendar year, every person having a license shall apply to the department of revenue for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the department.

(2) Each such application for a renewal license shall be accompanied by the license fee as prescribed in 15-57-106 and 15-57-107.

(3) If, by December 31, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be 110% of the rate prescribed in 15-57-106 and 15-57-107 if application is made on or before January 31 following the date of expiration. If application for renewal is made after January 31, the fee charged shall be double the rate prescribed in 15-57-106 and 15-57-107.

History: En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971; amd. Sec. 2, Ch. 240, L. 1973; amd. Sec. 131, Ch. 516, L. 1973; amd. Sec. 8, Ch. 52, L. 1977; amd. Sec. 1, Ch. 419, L. 1977; R.C.M. 1947, 84-2404.

15-57-106. License fees for retail stores. (1) Every person or group opening, establishing, operating, or maintaining one or more retail stores or mercantile establishments within this state under the same general management, supervision, or ownership where a stock of goods is maintained during any portion of the year, regardless of whether the stock is held by ownership, consignment, agency, or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association, or consumer cooperative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by the person or retailer under this chapter, but the units or members shall be taxed as individual units. The license fee herein prescribed shall be paid annually.

(2) The annual license fees herein prescribed for retail stores or mercantile establishments which have gross receipts in excess of $350,000 per year shall be as follows:

(a) Upon one store, the annual license fee shall be $11.

(b) Upon the second store, the annual license fee shall be $56.

(c) Upon the third store, the annual license fee shall be $106.

(d) Upon the fourth store, the annual license fee shall be $156.

(e) Upon the fifth store and on each store in excess of five stores, the annual license fee shall be $206.

(3) The annual license fees herein prescribed for retail stores or mercantile establishments which do not have gross receipts in excess of $350,000 per year shall be as follows:

(a) Upon one store, the annual license fee shall be $11.

(b) Upon the second store, the annual license fee shall be $13.50.

(c) Upon the third store, the annual license fee shall be $21.

(d) Upon the fourth store, the annual license fee shall be $28.50.

(e) Upon the fifth store, the annual license fee shall be $36.

(f) Upon the sixth store and each store in excess of six, the annual license fee shall be $44.50.

(4) For the purpose of determining the number of stores or units in the chain, all stores or units in the chain shall be included regardless of size even though one or more stores or units may be included in a different category for this license, provided the larger stores or units shall be counted last.

History: En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965; amd. Sec. 3, Ch. 240, L. 1973; amd. Sec. 1, Ch. 200, L. 1974; amd. Sec. 9, Ch. 52, L. 1977; R.C.M. 1947, 84-2405.

15-57-107. License fees for wholesale stores. Wholesale stores shall be taxed in all cases as individual units at the rate of $43.50 per unit, regardless of ownership, but whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under 15-57-106 for the conduct of a retail store in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965; amd. Sec. 4, Ch. 240, L. 1973; R.C.M. 1947, 84-2407.

15-57-108. Application of chapter. The provisions of this chapter shall be construed to apply to every person, firm, corporation, partnership, or group, either domestic or foreign, which is controlled or held in any degree with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

History: En. Sec. 9, Ch. 163, L. 1939; R.C.M. 1947, 84-2409.

15-57-109. Employment of staff — disposal of license money. The department of revenue may employ such clerical and field assistance as necessary to carry out and administer the provisions of this chapter. All money collected under the provisions of this chapter shall be paid into the state treasury and credited to the general fund.

History: En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971; amd. Sec. 6, Ch. 240, L. 1973; amd. Sec. 132, Ch. 516, L. 1973; amd. Sec. 19, Ch. 265, L. 1977; amd. Sec. 28, Ch. 518, L. 1977; R.C.M. 1947, 84-2412; amd. Sec. 1, Ch. 441, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 79, L. 1983.

Compiler's Comments

1983 Amendment: Deleted last sentence, which read: "Administration of Title 30, chapter 14, part 2, is the responsibility of the department of commerce."

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

15-57-110. Penalty. Any person or group who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $200, and each day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 11, Ch. 163, L. 1939; amd. Sec. 11, Ch. 52, L. 1977; R.C.M. 1947, 84-2411.

CHAPTER 58

COAL RETAILER'S LICENSE TAX

Part 1 — General Provisions

Section

15-58-101. Definition.
15-58-102. License tax to retail coal — rate.
15-58-103. Repealed.
15-58-104. Record of coal sold for retail.
15-58-105. Statement of coal sold — payment of tax.
15-58-106. Procedure to determine tax on failure to file statement — penalty.
15-58-107. Warrant for distraint.
15-58-108. License tax supplemental.
15-58-109. Deposit of license fees.
15-58-110. Deficiency assessment — hearing — interest.
15-58-111. Credit for overpayment — interest on overpayment.
15-58-112 through 15-58-120 reserved.
15-58-121. Full weight of coal.
15-58-122. Misrepresentation in sale forbidden.
15-58-123. Invoice of coal.
15-58-124. Penalty for failure to file statement.
15-58-125. Penalty for violation of chapter.
15-58-126. Statute of limitations.

Part 1

General Provisions

Part Cross-References

Coal gross proceeds tax, Title 15, ch. 23, part 7.

15-58-101. Definition. The term "mine operator", as used in this chapter, means every person who engages in the business in this state of working or operating any mine or mining property from which coal of any kind is mined, extracted, or produced, whether such person shall engage in such business as owner, lessee, trustee, receiver, or in any other capacity, but shall not mean or include a laborer or employee employed to work in or about any such mine or mining property.

History: En. Sec. 1, Ch. 3, Ex. L. 1921; re-en. Sec. 2327, R.C.M. 1921; re-en. Sec. 2327, R.C.M. 1935; R.C.M. 1947, 84-1401(part).

15-58-102. License tax to retail coal — rate. Every person who engages in or carries on the occupation or business in this state of retailing or selling at retail coal of any kind must, for each year when engaged in such occupation or business, pay to the department of revenue a license tax for engaging in and carrying on such business in an amount equal to 5 cents a ton for each and every ton of coal containing 2,000 pounds sold by such person during such year and for the mining of which coal no mine operator has paid or assumed liability for the payment of any license taxes to the state under any law of this state.

History: En. Sec. 2, Ch. 3, Ex. L. 1921; re-en. Sec. 2328, R.C.M. 1921; re-en. Sec. 2328, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1975; R.C.M. 1947, 84-1402.

15-58-103. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 3, Ch. 3, Ex. L. 1921; re-en. Sec. 2329, R.C.M. 1921; re-en. Sec. 2329, R.C.M. 1935; amd. Sec. 48, Ch. 516, L. 1973; R.C.M. 1947, 84-1403.

15-58-104. Record of coal sold for retail. Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no mine operator has paid or assumed liability for the payment of any license tax to the state under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the department of revenue, its director, agents, or employees.

History: En. Sec. 5, Ch. 3, Ex. L. 1921; re-en. Sec. 2331, R.C.M. 1921; re-en. Sec. 2331, R.C.M. 1935; amd. Sec. 49, Ch. 516, L. 1973; amd. Sec. 3, Ch. 125, L. 1975; R.C.M. 1947, 84-1405.

15-58-105. Statement of coal sold — payment of tax. (1) Each and every person must, within 30 days after the end of each quarter, prepare a statement on forms prescribed by the department of revenue showing the total number of tons of coal sold by such person during such quarter for the mining of which no mine operator has paid or assumed liability for the payment of any license tax to the state under any law of this state, together with the total amount due to the state as license taxes from such person for such quarter.

(2) The license taxes of 5 cents per ton shall be paid in quarterly installments for the quarters ending March 31, June 30, September 30, and December 31 in each year, and the total amount of such license taxes becoming due for any quarter shall be paid to the department within 30 days after the end of the quarter for which the same is due and at the same time such statement is delivered to the department.

(3) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: (1), (3)En. Sec. 6, Ch. 3, Ex. L. 1921; re-en. Sec. 2332, R.C.M. 1921; re-en. Sec. 2332, R.C.M. 1935; amd. Sec. 50, Ch. 516, L. 1973; amd. Sec. 4, Ch. 125, L. 1975; Sec. 84-1406, R.C.M. 1947; (2)En. Sec. 4, Ch. 3, Ex. L. 1921; re-en. Sec. 2330, R.C.M. 1921; re-en. Sec. 2330, R.C.M. 1935; amd. Sec. 2, Ch. 125, L. 1975; Sec. 84-1404, R.C.M. 1947; R.C.M. 1947, 84-1404, 84-1406.

15-58-106. Procedure to determine tax on failure to file statement — penalty. (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-58-105 or shall fail to make payment of such license tax within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license taxes due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-58-105 is provided to the department.

History: En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R.C.M. 1921; amd. Sec. 2, Ch. 74, L. 1931; re-en. Sec. 2334, R.C.M. 1935; amd. Sec. 51, Ch. 516, L. 1973; amd. Sec. 5, Ch. 125, L. 1975; R.C.M. 1947, 84-1408; amd. Sec. 32, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within such time, a lien may be filed as set forth in 15-58-107" at the end of (3); deleted a sentence at the end of (3) that required payment within 15 days of receiving the letter.

15-58-107. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1408.1 by Sec. 6, Ch. 125, L. 1975; R.C.M. 1947, 84-1408.1; amd. Sec. 33, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-58-108. License tax supplemental. The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this chapter.

History: En. Sec. 17, Ch. 3, Ex. L. 1921; re-en. Sec. 2343, R.C.M. 1921; re-en. Sec. 2343, R.C.M. 1935; amd. Sec. 7, Ch. 125, L. 1975; R.C.M. 1947, 84-1417.

15-58-109. Deposit of license fees. All license fees collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state.

History: En. Sec. 15, Ch. 3, Ex. L. 1921; re-en. Sec. 2341, R.C.M. 1921; re-en. Sec. 2341, R.C.M. 1935; R.C.M. 1947, 84-1415.

15-58-110. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983.**

15-58-111. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-58-110 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-58-112 through 15-58-120 reserved.

15-58-121. Full weight of coal. In all sales of coal the person selling the same must give to the purchaser full weight at the rate of 2,000 pounds to the ton.

History: **En. Sec. 10, Ch. 3, Ex. L. 1921; re-en. Sec. 2336, R.C.M. 1921; re-en. Sec. 2336, R.C.M. 1935; R.C.M. 1947, 84-1410.**

Cross-References
Deceptive business practices, 45-6-318.

15-58-122. Misrepresentation in sale forbidden. No person shall misrepresent to the public respecting any coal offered for sale or sell coal of any particular name or from any particular mine under the name or designation of another coal or mine.

History: En. Sec. 11, Ch. 3, Ex. L. 1921; re-en. Sec. 2337, R.C.M. 1921; re-en. Sec. 2337, R.C.M. 1935; R.C.M. 1947, 84-1411.

Cross-References
Deceptive business practices, 45-6-318.

15-58-123. Invoice of coal. Every mine operator shall make out and deliver to every person to whom any coal is sold or delivered by such mine operator an invoice covering the coal so sold or delivered, on which invoice shall be stated whether or not such mine operator has paid or assumes liability for the payment of the license fee for mining the same to the state of Montana under any law of this state.

History: En. Sec. 13, Ch. 3, Ex. L. 1921; re-en. Sec. 2339, R.C.M. 1921; re-en. Sec. 2339, R.C.M. 1935; R.C.M. 1947, 84-1413.

15-58-124. Penalty for failure to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by this chapter in the manner or within the time required or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 3, Ex. L. 1921; re-en. Sec. 2333, R.C.M. 1921; re-en. Sec. 2333, R.C.M. 1935; R.C.M. 1947, 84-1407.

15-58-125. Penalty for violation of chapter. Any violation of any of the provisions of this chapter shall be deemed a misdemeanor and shall be punishable by a fine of not more than $1,000 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 3, Ex. L. 1921; re-en. Sec. 2342, R.C.M. 1921; re-en. Sec. 2342, R.C.M. 1935; R.C.M. 1947, 84-1416.

15-58-126. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional

assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: **En. Sec. 1, Ch. 194, L. 1983.**

CHAPTER 59

CEMENT TAXES

Part 1 — Cement and Gypsum Producers

Section

15-59-101. Definitions.
15-59-102. License tax on producers and importers of gypsum and cement.
15-59-103. Repealed.
15-59-104. Manufacturers to keep records.
15-59-105. Quarterly statement and payment of tax.
15-59-106. Procedure to estimate tax on failure to file statement — penalty.
15-59-107. Warrant for distraint.
15-59-108. Deposit of taxes.
15-59-109. License tax supplemental.
15-59-110. Duty to file statement.
15-59-111. Renumbered 15-59-121 by Code Commissioner, 1983.
15-59-112. Deficiency assessment — hearing — interest.
15-59-113. Credit for overpayment — interest on overpayment.
15-59-114. Statute of limitations.
15-59-115 through 15-59-120 reserved.
15-59-121. Penalty for violations.

Part 2 — Cement Dealers

15-59-201. License tax on sales of cement and byproducts.
15-59-202. Repealed.
15-59-203. Record of cement received.
15-59-204. Statement of product sold — payment of tax.
15-59-205. Procedure to estimate tax on failure to file — penalty.
15-59-206. Warrant for distraint.
15-59-207. Invoice to state whether tax paid.
15-59-208. Deposit of license taxes.
15-59-209. License taxes supplemental.
15-59-210. Duty to file statement.
15-59-211. Renumbered 15-59-221 by Code Commissioner, 1983.
15-59-212. Deficiency assessment — hearing — interest.
15-59-213. Credit for overpayment — interest on overpayment.
15-59-214. Statute of limitations.
15-59-215 through 15-59-220 reserved.
15-59-221. Penalty for violations.

Part 1

Cement and Gypsum Producers

15-59-101. Definitions. (1) The words "products of cement or gypsum" as used in 15-59-102 shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than 50% by weight. No double taxation of either cement, gypsum, or the products thereof is imposed by this part.

(2) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum, as the same are defined in this section, shipped or transported into this state from point of origin without this state.

History: (1)En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R.C.M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; re-en. Sec. 2357, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977; Sec. 84-1202, R.C.M. 1947; (2)En. Sec. 2, Ch. 166, L. 1931; re-en. Sec. 2357.1, R.C.M. 1935; amd. Sec. 2, Ch. 192, L. 1945; Sec. 84-1203, R.C.M. 1947; R.C.M. 1947, 84-1202(2), 84-1203.

15-59-102. License tax on producers and importers of gypsum and cement. Every person engaged in or carrying on the business in the state of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum and any person who imports into this state any such products for sale or use must pay to the department of revenue for the use of the state a license tax for engaging in and carrying on such business in the state in an amount equal to the following sums:

(1) for each ton of cement produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated or imported by such person into this state for sale or use, 22 cents;

(2) for each ton of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named or imported by such person into this state for such sale or use, 5 cents.

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R.C.M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; re-en. Sec. 2357, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977; R.C.M. 1947, 84-1202(1).

15-59-103. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R.C.M. 1921; re-en. Sec. 2359, R.C.M. 1935; amd. Sec. 4, Ch. 192, L. 1945; amd. Sec. 39, Ch. 516, L. 1973; R.C.M. 1947, 84-1205.

15-59-104. Manufacturers to keep records. Every such person shall keep a record in such form as the department of revenue may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the department, its agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R.C.M. 1921; re-en. Sec. 2360, R.C.M. 1935; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973; R.C.M. 1947, 84-1206.

15-59-105. Quarterly statement and payment of tax. (1) Each person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue, and deliver to the department a statement showing the total number of tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in 15-59-101(1) and 15-59-102 or imported by such person into the state of Montana for sale or use during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter.

(2) Such annual license tax as imposed by 15-59-102 shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of such license tax due for each such quarter shall be paid to the department within 30 days after the end of each such quarter and at the same time such statement is delivered to the department.

(3) Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state may include all thereof in one statement.

(4) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: (1), (3), (4)En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R.C.M. 1921; re-en. Sec. 2361, R.C.M. 1935; amd. Sec. 6, Ch. 192, L. 1945; amd. Sec. 41, Ch. 516, L. 1973; amd. Sec. 2, Ch. 108, L. 1977; Sec. 84-1207, R.C.M. 1947; (2)En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R.C.M. 1921; re-en. Sec. 2358, R.C.M. 1935; amd. Sec. 3, Ch. 192, L. 1945; amd. Sec. 38, Ch. 516, L. 1973; Sec. 84-1204, R.C.M. 1947; R.C.M. 1947, 84-1204, 84-1207.

15-59-106. Procedure to estimate tax on failure to file statement — penalty. (1) If any such person shall fail, neglect, or refuse to file any statement required by 15-59-105 within the time required or shall fail to pay the tax required by this part on or before the date such payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amounts of the respective articles or products enumerated in 15-59-101(1) and 15-59-102 manufactured or produced by such person within this state or imported by such person into the state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-105 is provided to the department.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R.C.M. 1921; re-en. Sec. 2363, R.C.M. 1935; amd. Sec. 8, Ch. 192, L. 1945; amd. Sec. 42, Ch. 516, L. 1973; amd. Sec. 3, Ch. 108, L. 1977; R.C.M. 1947, 84-1209; amd. Sec. 34, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "if payment if not made, a warrant for distraint may be filed" for "if payment is not made within 15 days, a lien may be filed as set forth in 15-59-107" at the end of (3); deleted a sentence at the end of (3) that required payment within 15 days of receiving the letter.

15-59-107. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1213 by Sec. 4, Ch. 108, L. 1977; R.C.M. 1947, 84-1213; amd. Sec. 35, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-59-108. Deposit of taxes. All license taxes collected under the provisions of this part shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 15, Ex. L. 1921; re-en. Sec. 2364, R.C.M. 1921; re-en. Sec. 2364, R.C.M. 1935; R.C.M. 1947, 84-1210.

15-59-109. License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and fees now required to be paid by the persons subject to the provisions of this part.

History: En. Sec. 11, Ch. 15, Ex. L. 1921; re-en. Sec. 2366, R.C.M. 1921; re-en. Sec. 2366, R.C.M. 1935; R.C.M. 1947, 84-1212.

15-59-110. Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by 15-59-105 in the manner or within the time herein required or to make such statement false in any particular.

History: En. Sec. 7, Ch. 15, Ex. L. 1921; re-en. Sec. 2362, R.C.M. 1921; re-en. Sec. 2362, R.C.M. 1935; amd. Sec. 7, Ch. 192, L. 1945; R.C.M. 1947, 84-1208.

15-59-111. Renumbered 15-59-121 by Code Commissioner, 1983.

15-59-112. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer.

The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983.

15-59-113. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-59-112 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-59-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-59-115 through 15-59-120 reserved.

15-59-121. Penalty for violations. Any violation of the provisions of 15-59-101 through 15-59-106 or 15-59-110 through 15-59-113 shall be deemed a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 15, Ex. L. 1921; re-en. Sec. 2365, R.C.M. 1921; re-en. Sec. 2365, R.C.M. 1935; amd. Sec. 9, Ch. 192, L. 1945; R.C.M. 1947, 84-1211; MCA 1981, 15-59-111; redes. 15-59-121 by Code Commissioner, 1983.

Part 2

Cement Dealers

15-59-201. License tax on sales of cement and byproducts. Every person who engages in or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other byproducts of cement must pay to the department of revenue a license tax for engaging in and carrying on such business in an amount equal to 22 cents per ton of cement and 5 cents per ton on cement plaster, gypsum plaster, or other byproducts of cement sold by such person during such year and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state under any law of this state.

History: En. Sec. 2, Ch. 16, Ex. L. 1921; re-en. Sec. 2368, R.C.M. 1921; amd. Sec. 2, Ch. 127, L. 1925; re-en. Sec. 2368, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1975; amd. Sec. 1, Ch. 106, L. 1977; R.C.M. 1947, 84-1102.

15-59-202. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R.C.M. 1921; re-en. Sec. 2369, R.C.M. 1935; amd. Sec. 33, Ch. 516, L. 1973; R.C.M. 1947, 84-1103.

15-59-203. Record of cement received. Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster, and other byproducts of cement purchased or received by or delivered to such person for sale by such person at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster, or other byproducts of cement no person has paid or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the department of revenue, its agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R.C.M. 1921; re-en. Sec. 2371, R.C.M. 1935; amd. Sec. 34, Ch. 516, L. 1973; R.C.M. 1947, 84-1105.

15-59-204. Statement of product sold — payment of tax. (1) Each and every person must, within 30 days after the end of each quarter, prepare a statement on forms prescribed by the department showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid or assumed liability for the payment of any license tax to the state under any laws of this state, together with the total amount due to the state as license taxes from such person for such quarter.

(2) The license tax of 22 cents per ton and 5 cents per ton shall be paid in quarterly installments for the quarters ending March 31, June 30, September 30, and December 31 in each year, and the total amount of such license tax becoming due for any quarter shall be paid to the department of revenue within 30 days after the end of the quarter for which the same is due and at the same time such statement is delivered to the department.

(3) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: (1), (3)En. Sec. 6, Ch. 16, Ex. L. 1921; re-en. Sec. 2372, R.C.M. 1921; re-en. Sec. 2372, R.C.M. 1935; amd. Sec. 35, Ch. 516, L. 1973; amd. Sec. 3, Ch. 127, L. 1975; Sec. 84-1106, R.C.M. 1947; (2)En. Sec. 4, Ch. 16, Ex. L. 1921; re-en. Sec. 2370, R.C.M. 1921; re-en. Sec. 2370, R.C.M. 1935; amd. Sec. 2, Ch. 127, L. 1975; amd. Sec. 2, Ch. 106, L. 1977; Sec. 84-1104, R.C.M. 1947; R.C.M. 1947, 84-1104, 84-1106.

15-59-205. Procedure to estimate tax on failure to file — penalty. (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-59-204 within the time required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license tax due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license tax a penalty of 10% of the amount of such license tax plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license tax was due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-204 is provided to the department.

History: En. Sec. 8, Ch. 16, Ex. L. 1921; re-en. Sec. 2374, R.C.M. 1921; re-en. Sec. 2374, R.C.M. 1935; amd. Sec. 36, Ch. 516, L. 1973; amd. Sec. 4, Ch. 127, L. 1975; R.C.M. 1947, 84-1108; amd. Sec. 36, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within such time, a lien may be filed as set forth in 15-59-206" at the end of (3); deleted a sentence at the end of (3) that required payment within 15 days of receiving the letter.

15-59-206. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1108.1 by Sec. 5, Ch. 127, L. 1975; R.C.M. 1947, 84-1108.1; amd. Sec. 37, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-59-207. Invoice to state whether tax paid. Every person engaged in the business in this state of manufacturing or producing cement, cement plaster, gypsum plaster, or other byproduct of cement shall make out and deliver to every person to whom any of such commodities are sold or delivered by such person an invoice covering the commodity or commodities so sold or delivered, on which invoice shall be stated whether or not such person has paid or assumes liability for the payment of the license tax for manufacturing or producing the same to the state of Montana under any laws of this state.

History: En. Sec. 10, Ch. 16, Ex. L. 1921; re-en. Sec. 2376, R.C.M. 1921; re-en. Sec. 2376, R.C.M. 1935; R.C.M. 1947, 84-1110.

15-59-208. Deposit of license taxes. All license taxes collected under the provisions of this part shall be deposited to the credit of the general fund of the state.

History: En. Sec. 12, Ch. 16, Ex. L. 1921; re-en. Sec. 2378, R.C.M. 1921; re-en. Sec. 2378, R.C.M. 1935; R.C.M. 1947, 84-1112.

15-59-209. License taxes supplemental. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this part.

History: En. Sec. 14, Ch. 16, Ex. L. 1921; re-en. Sec. 2380, R.C.M. 1921; re-en. Sec. 2380, R.C.M. 1935; R.C.M. 1947, 84-1114.

15-59-210. Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by this part in the manner or within the time required or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 16, Ex. L. 1921; re-en. Sec. 2373, R.C.M. 1921; re-en. Sec. 2373, R.C.M. 1935; R.C.M. 1947, 84-1107.

15-59-211. Renumbered 15-59-221 by Code Commissioner, 1983.

15-59-212. Deficiency assessment — hearing — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983.**

15-59-213. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-59-212 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-59-214. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: **En. Sec. 1, Ch. 194, L. 1983.**

15-59-215 through 15-59-220 reserved.

15-59-221. Penalty for violations. Any violation of any of the provisions of this part shall be deemed a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: **En. Sec. 13, Ch. 16, Ex. L. 1921; re-en. Sec. 2379, R.C.M. 1921; re-en. Sec. 2379, R.C.M. 1935; R.C.M. 1947, 84-1113; MCA 1981, 15-59-211; redes. 15-59-221 by Code Commissioner, 1983.**

CHAPTERS 60 THROUGH 69

RESERVED

CHAPTER 70

GASOLINE AND VEHICLE FUELS TAXES

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15-70-324. Examination of records — enforcement of part.
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15-70-326. Computation.
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Part 5 — Alcohol Tax Incentive and Administration

15-70-501. Short title.
15-70-502. Purpose.
15-70-503. Definitions.
15-70-504 through 15-70-510 reserved.

15-70-511. Licensing of alcohol distributors.
15-70-512. Distributor's statement.
15-70-513. Recordkeeping requirements.
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15-70-521. Denaturing alcohol — refund authorized.
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15-70-527. Penalty for failure to file.

Chapter Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Local option motor fuel tax, Title 7, ch. 14, part 3.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Part 1

General Provisions

15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the state special revenue fund to the credit of the department of highways. Those funds hereinbelow allocated to cities, towns, and counties shall be paid by the department of highways from the state special revenue fund to such cities, towns, and counties.

(1) $14,000,000 of the funds collected under this chapter shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $6,350,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) $7,650,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment.

(8) Funds authorized by this section shall be used for construction and maintenance programs only.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973; amd. Sec. 1, Ch. 330, L. 1974; amd. Sec. 2, Ch. 514, L. 1975; amd. Sec. 3, Ch. 34, L. 1977; R.C.M. 1947, 84-1840; amd. Sec. 4, Ch. 632, L. 1979; amd. Sec. 2, Ch. 238, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 624, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 238, in introductory clause, before "funds hereinbelow allocated" substituted "Those" for "except those"; after "counties" deleted "which funds"; near end of introductory clause after "paid by the" substituted "department of highways from the earmarked revenue fund" for "state treasurer directly"; and in (6) after "department of highways" deleted "and state treasurer".

Chapter 277, in introduction, substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 624, in introductory portion, inserted "special" before "revenue fund"; in (1) at beginning changed $6,500,000 to $14,000,000; in (1)(a) at beginning changed $2,950,000 to $6,350,000; in (1)(b) changed $3,550,000 to $7,650,000; and inserted (8).

Purported 1979 Amendment: Although sec. 4, Ch. 632, L. 1979, purports to amend this code section, all amendments were removed from sec. 4 during the legislative process and no actual amendment was made. If normal procedure had been followed, sec. 4 would have been stricken in its entirety from the bill.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Disposition of funds appropriated for public transportation, 7-14-102.

Disposition of gasoline and vehicle fuels taxes, 15-70-101.

Allocation of 1 cent per gallon of aviation fuel tax to Department of Commerce, 15-70-204, 67-1-301.

Gasoline tax net proceeds pledged to payment of general obligation highway bonds, 17-5-507.

Distribution of funds allocated to Department of Highways, 60-3-201.

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-102. Allocation of funds — participation in railroad grade crossing protection. (1) The sum of $100,000 may be allocated from the state special revenue fund, state highway account, for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at $100,000 at the beginning of each fiscal year thereafter, for participation by the department of highways with railroads in construction of railroad grade crossing protection on any public highway or road except those designated on the interstate, primary, or urban systems within the state. The department of highways shall select those grade crossings in the state which, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost thereof solely from this fund.

(2) Signal protection provided under the fund shall be limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of such signals shall be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state, provided, however, the fund shall not be used for protection of grade crossings on the secondary system where the protection is considered necessary and the cost thereof is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of 15-70-101 for participation of installation in grade crossing protection within the county or city.

History: En. 84-1840.1 by Sec. 1, Ch. 399, L. 1973; R.C.M. 1947, 84-1840.1; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

15-70-103. Time of mailing and filing. (1) Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within 30 days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

(2) If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the addressee, and the date of registration, certification, or certificate shall be deemed the postmarked date.

(3) If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if done on the next business day. Such reports shall be considered filed or received on the date or as provided in this chapter.

History: **Ap. p. Sec. 12, Ch. 369, L. 1969; Sec. 84-1856, R.C.M. 1947; Ap. p. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; Sec. 84-1835, R.C.M. 1947; R.C.M. 1947, 84-1835(part (a)), 84-1856.**

Cross-References

Penalty for failure to file within prescribed time, 15-70-330.

15-70-104. Rules to be established by department. (1) The department of revenue shall have the power and it shall be its duty to adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of part 3.

History: **(1)En. Sec. 17, Ch. 369, L. 1969; amd. Sec. 100, Ch. 516, L. 1973; Sec. 84-1861, R.C.M. 1947; (2)En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; Sec. 84-1838, R.C.M. 1947; R.C.M. 1947, 84-1838(part), 84-1861.**

15-70-105 through 15-70-110 reserved.

15-70-111. Judicial review and appeals. Any final written determination by the director of the department of revenue under this chapter may be appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark County, and an appeal may be taken from the judgment of the district court to the supreme court.

History: **En. Sec. 12, Ch. 162, L. 1955; amd. Sec. 86, Ch. 516, L. 1973; amd. Sec. 5, Ch. 155, L. 1977; R.C.M. 1947, 84-1841.**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

Judicial review of contested cases, 15-2-303.

Part 2

Basic Gasoline License Tax

Part Cross-References

Local option motor fuel tax, Title 7, ch. 14, part 3.

15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(7) "Gasohol" means all products commonly or commercially known or sold as gasohol, produced and sold in Montana for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products.

(8) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301(6).

(9) "Import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(10) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(11) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(12) "Use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof.

History: **En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971; R.C.M. 1947, 84-1846; amd. Sec. 1, Ch. 576, L. 1979; amd. Sec. 1, Ch. 627, L. 1979; amd. Sec. 1, Ch. 514, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (6)(c) to be effective Jan. 1, 1984.

Suspension: Sec. 3, Ch. 576, L. 1979 (repealed by sec. 14, Ch. 649, L. 1983), provided: "The governor may, upon recommendation of the director of the department of revenue and the director of the department of highways, suspend this act if the fiscal impact of this act significantly impairs the maintenance or construction of state or interstate highway systems." Chapter 576 added a definition of "gasohol".

Termination: Sec. 4, Ch. 576, L. 1979, provided: "This act terminates April 1, 1989."

15-70-202. License, fee, and security of gasoline distributors. (1) All gasoline distributors, prior to the commencement of doing business, shall file an application for a license with the department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

(2) Any person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200 and upon renewal of the license shall pay an annual fee of $200.

(3) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under such conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

History: **En. Sec. 13, Ch. 369, L. 1969; amd. Sec. 98, Ch. 516, L. 1973; R.C.M. 1947, 84-1857; amd. Sec. 1, Ch. 609, L. 1979; amd. Sec. 2, Ch. 514, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (2) to be effective Jan. 1, 1984.

15-70-203. License to sell gasoline on which refund may be claimed. (1) Any person other than a licensed distributor shall obtain a license from the department of revenue prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license shall be issued for 3 years upon payment of a fee of $3. Licenses must be renewed and the fee paid every 3 years from date of issuance.

(2) Any person failing to comply with this section shall be subject to a fine of not less than $25 or more than $200 or imprisonment in the county jail for a period not less than 10 days or more than 60 days or both fine and imprisonment.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(6).

15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and 15 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973; amd. Sec. 3, Ch. 514, L. 1975; amd. Sec. 5, Ch. 390, L. 1977; R.C.M. 1947, 84-1847; amd. Sec. 2, Ch. 576, L. 1979; amd. Sec. 2, Ch. 632, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 624, L. 1983; amd. Sec. 12, Ch. 649, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 624, in (1) near middle, raised tax on gallon from 9 cents to 15 cents; and made permanent the 1-cent increment that was to have terminated July 1, 1983 (sec. 2, Ch. 632, L. 1979).

Chapter 649 substituted existing (3) for former text, which read: "(3) Gasohol shall be subject to gasoline license taxes in accordance with the following schedule:

(a) beginning April 1, 1979, gasohol shall be taxed at the rate of 2 cents per gallon;

(b) beginning April 1, 1985, gasohol shall be taxed at the rate of 4 cents per gallon;

(c) beginning April 1, 1987, gasohol shall be taxed at the rate of 6 cents per gallon."; and deleted (4), which provided: "If at any time the gasoline license tax is lower than the current applicable tax on gasohol, the lower tax rate shall be adopted for gasohol."

1981 Amendment: Chapter 274 substituted "department of commerce" for "department of community affairs" in (1).

Suspension: Section 3, Ch. 576, L. 1979 (repealed by sec. 14, Ch. 649, L. 1983), provided: "The governor may, upon recommendation of the director of the department of revenue and the director of the department of highways, suspend this act if the fiscal impact of this act significantly impairs the maintenance or construction of state or interstate highway systems." Chapter 576 added subsections (3) and (4) (now deleted) relating to gasohol.

Termination: Section 4, Ch. 576, L. 1979, provided: "This act terminates April 1, 1989."

Cross-References

Refund authorized, 15-70-521.

Tax incentive for production of alcohol, 15-70-522.

Gasoline tax net proceeds pledged to payment of general obligation highway bonds, 17-5-507.

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-205. Distributor's statement and payment. (1) Each distributor shall, not later than the 25th day of each calendar month, render a true statement, duly signed, to the department of revenue of all gasoline distributed and received by him in this state during the preceding calendar month and containing such other information as the department may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 2% of the first 6 cents tax which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however, that no such allowance shall be deducted from the 1 cent tax on aviation gasoline.

(2) Any distributor engaged in or carrying on his business at more than one place or location in this state may include all such places of business in one statement.

History: En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971; amd. Sec. 91, Ch. 516, L. 1973; R.C.M. 1947, 84-1849.

15-70-206. Recordkeeping requirements. Each distributor or any other person dealing in, transporting, receiving, or storing gasoline shall keep for a period not to exceed 3 years such records, receipts, and invoices and any other pertinent papers and information as the department of revenue may require.

History: En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971; amd. Sec. 93, Ch. 516, L. 1973; R.C.M. 1947, 84-1851.

15-70-207. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department of revenue, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the department may require.

History: En. Sec. 9, Ch. 369, L. 1969; amd. Sec. 6, Ch. 204, L. 1971; amd. Sec. 95, Ch. 516, L. 1973; R.C.M. 1947, 84-1853.

15-70-208. Examination of records. (1) The department of revenue or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting,

or storing gasoline must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

History: En. Secs. 6, 8, Ch. 369, L. 1969; amd. Secs. 92, 94, Ch. 516, L. 1973; R.C.M. 1947, 84-1850, 84-1852; amd. Sec. 30, Ch. 581, L. 1979; amd. Sec. 1, Ch. 16, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), substituted "furnished at the direction of the department . . . business location of the taxpayer." for "furnished to the department for review or such dealer must bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept. However, the taxpayer is not liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of such examination is the payment of a tax deficiency."

15-70-209. Information reports. (1) Any person receiving gasoline, including every common carrier, private carrier, and contract carrier of property who shall haul, receive, transport, or ship any gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of revenue, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of $25 for each failure or refusal; provided, however, that if any person shall establish to the satisfaction of the department that his failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

History: En. Sec. 10, Ch. 369, L. 1969; amd. Sec. 96, Ch. 516, L. 1973; R.C.M. 1947, 84-1854.

15-70-210. Tax penalty for delinquency. (1) Any license tax not paid within the time provided shall be delinquent, and a penalty of 10% shall be added to the tax and the tax shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department of revenue may waive penalty.

(2) If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this part or shall willfully fail to make payment of such license tax within the time provided, the department shall be authorized to revoke any license issued under this part.

(3) In addition, the department shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor and shall add thereto a penalty of $25 or 10% thereof, whichever is greater, together with interest at the rate of 1% per month from the date such statements should have been made and said license tax paid.

(4) The state treasurer shall proceed to collect such license tax, with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973; R.C.M. 1947, 84-1858(part).

15-70-211. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. No action may be maintained to enjoin the collection of all or any part of the license tax.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973; R.C.M. 1947, 84-1858(part); amd. Sec. 38, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department had a lien in the amount owing on the property of the taxpayer; deleted a sentence before the last sentence that provided for the enforcement of the lien provided by this section in the same manner as judgment liens; substituted "No action may be maintained" for "No action shall be maintained" at the beginning of the last sentence; deleted subsection (2) which was the procedure used by the state treasurer to release the lien.

15-70-212. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 16, Ch. 369, L. 1969; R.C.M. 1947, 84-1860.

15-70-213 through 15-70-220 reserved.

15-70-221. Refund authorized. (1) Any person who shall purchase and use any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol or operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such refund or drawback should in no instance exceed the tax paid or to be paid to the state and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the department of commerce by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(1); amd. Sec. 2, Ch. 627, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 13, Ch. 649, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "paid for" inserted "denaturing alcohol to be used in gasohol or".

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1).

Cross-References

Refund authorized, 15-70-521.

Tax incentive for production of alcohol, 15-70-522.

Use of money credited to state park account for refunds, 60-3-201.

15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim.

(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(3) Special storage facilities used for certain periods must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(4) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(5) When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of revenue.

(6) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if such person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources.

History: **En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 3, Ch. 627, L. 1979.**

15-70-223. Estimate allowed for agricultural use. (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices as an estimate of off-roadway use.

(2) If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department of revenue.

(3) An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222.

History: **En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 4, Ch. 627, L. 1979.**

15-70-224. Determination of highway use. Highway use for each vehicle is determined by dividing the average miles per gallon rate into the number of miles traveled on public roads.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 5, Ch. 627, L. 1979.

15-70-225. Application for refund — filing — correction by department. (1) The application for refund shall be a signed statement, on a form furnished by the department of revenue, accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(3) All applications for refunds shall be filed with the department within 14 months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid within 3 years after the date of such erroneous payment.

(4) Should the department find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 6, Ch. 627, L. 1979.

15-70-226. Approval or rejection of claim. (1) The department shall have 120 days after receiving the claim to approve or reject it. If approved, the department of revenue shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject such claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 7, Ch. 627, L. 1979.

15-70-227 through 15-70-230 reserved.

15-70-231. Unlawful use of aviation gasoline. It shall be unlawful for any person to use aviation gasoline or to sell such gasoline for use in any motorized vehicle operated upon the public highways or streets of this state.

Violation of this section shall be a misdemeanor subject to the penalties provided in 15-70-232.

History: En. 84-1855.1 by Sec. 8, Ch. 204, L. 1971; R.C.M. 1947, 84-1855.1.

15-70-232. Penalties. Any distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided or who shall be delinquent in the payment of any license tax imposed by this part or who shall make any false statement with reference to his business or who shall make any false statement on any claim for refund or who violates any provision of the part shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding $1,000 or imprisoned in the county jail for not to exceed 6 months or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 15, Ch. 369, L. 1969; R.C.M. 1947, 84-1859.

Cross-References

Applicable to violations of provisions of local option motor fuels tax, 7-14-304.

Part 3

Special Fuels Use Tax

15-70-301. Definitions. As used in this part, the following definitions shall apply:

(1) "Bond" means:

(a) a bond duly executed by a special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of such special fuel dealer or special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel dealer or special fuel user, under such terms and conditions as the department of revenue may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Department" means the department of revenue.

(3) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(4) "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

(5) "Public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state of Montana or any political subdivision thereof or which have been or shall be dedicated to public use or have been acquired by eminent domain or have been acquired by

adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(6) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(7) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him or any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by such dealer. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(9) "Use" means either the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while such vehicle is within this state or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973; amd. Sec. 1, Ch. 473, L. 1975; R.C.M. 1947, 84-1831; amd. Sec. 1, Ch. 350, L. 1979; amd. Sec. 2, Ch. 609, L. 1979.

Cross-References

Special fuels excluded from definition of "gasoline", 15-70-201.

Definition of "school district", 20-15-403.

15-70-302. Special fuel dealer's licenses and special fuel user's permits required — exceptions. (1) It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2) Every special fuel user shall obtain annually from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel user's permit and shall at all times display the original or a reproduced copy of the permit in each such vehicle or vehicles operated by him upon the highways as herein defined which shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user shall be responsible for reproducing clear and legible copies of the permit.

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used

for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

(4) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit shall not be transferable and shall be valid for 90 days. Permits will be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(a); amd. Sec. 1, Ch. 599, L. 1979.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-303. Application for license or permit. (1) Application for a special fuel dealer's license or a special fuel user's permit shall be made to the department unless otherwise provided herein.

(2) The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(b), (c); amd. Sec. 2, Ch. 599, L. 1979.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-304. Bonding, release of surety, and additional bond. (1) Except as herein provided, no special fuel dealer's license or special fuel user's permit shall be issued to any person or continued in force unless such person has furnished bond, as defined in 15-70-301 and in such form as the department may require, to secure its compliance with this part and the payment of any and all taxes, interest, and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the department that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this part. Upon application, the department shall waive the bond requirement of any public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity.

(2) The total amount of the bond or bonds required of any special fuel dealer shall be equivalent to twice his estimated monthly tax payments and the total amount of the bond or bonds required of any special fuel user shall be equivalent to twice his estimated quarterly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never

be less than $5,000 for any special fuel user awarded a contract in accordance with 15-70-321 or less than $500 for any other special fuel user and not less than $1,000 for a special fuel dealer.

(3) Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the 30-day period. The department shall, promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the 30-day period, file a new bond in accordance with the requirements of this section or make a deposit in lieu thereof as provided in 15-70-301(1), the department forthwith shall cancel the special fuel dealer's license or special fuel user's permit.

(4) The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(1) if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user or the market value of the properties deposited as security by such special fuel dealer or special fuel user shall become impaired or inadequate, and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within 30 days after being requested so to do by the department, said department forthwith shall cancel his license.

History: **En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(d), (i), (j); amd. Sec. 3, Ch. 599, L. 1979; amd. Sec. 1, Ch. 625, L. 1979.**

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-305. Issuance of license or permit — grounds for refusal — hearing. (1) Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license or permit to act as a special fuel dealer or special fuel user; provided, however, the department may refuse to issue a special fuel dealer's license or a special fuel user's permit to any person:

(a) who formerly held a license or permit which, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or

(c) upon other sufficient cause being shown.

(2) Before such refusal, the department shall grant the applicant a hearing and shall grant him at least 10 days' written notice of the time and place thereof.

(3) Each special fuel dealer's license or special fuel user's permit shall be valid until suspended or revoked for cause or otherwise canceled.

(4) No special fuel dealer's license or special fuel user's permit shall be transferable.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(e) thru (g); amd. Sec. 4, Ch. 599, L. 1979.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-306. Revocation, suspension, and cancellation. (1) The department may revoke the license or permit of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail addressed to his last-known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice not more than 30 days or less than 10 days from date of such notice and show cause, if any he has, why the license or the permit or each of them should not be revoked; provided, however, that at any time prior to and pending such hearing, the department may in the exercise of reasonable discretion suspend such license or permit.

(2) Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 5, Ch. 599, L. 1979.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Enforcement by Department of Highways personnel, 61-12-206.

15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any license to act as a special fuel dealer or any special fuel user permit immediately upon surrender thereof by the holder.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 6, Ch. 599, L. 1979.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-308. Temporary cash compliance bond. (1) A special fuel user subject to the licensing requirements of this part may obtain a temporary 30-day operating permit by posting a $100 cash compliance bond on each vehicle at any weigh station, or with any person authorized by the department of highways to issue a cash compliance bond.

(2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day period, and otherwise complies with the requirements of this part, the $100 payment received for the temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the $100 payment is forfeited to the state.

(3) The temporary permit is issued subject to the same restrictions and requirements as the annual permit.

History: **En. Sec. 1, Ch. 78, L. 1981.**

15-70-309 and 15-70-310 reserved.

15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit. (1) Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, shall be required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department may prescribe by order or rule.

History: **En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973; amd. Sec. 1, Ch. 440, L. 1975; R.C.M. 1947, 84-1842.**

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-312. Fees for temporary permits — duration of temporary permits. (1) The temporary special fuel permits shall cost the special fuel vehicle user a fee of $30. The permit shall be valid for a period of time not to exceed 72 hours and will be automatically void should the vehicle leave the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost $30 per unit for the calendar year in which the fee is collected. The permit shall not be transferable. A unit shall be defined as:

(a) one truck suitable for hauling produce;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected shall be remitted to the department or deposited directly in the state special revenue fund for the department of highways.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975; R.C.M. 1947, 84-1843(part); amd. Sec. 1, Ch. 601, L. 1979; amd. Sec. 1, Ch. 40, L. 1981; amd. Sec. 3, Ch. 48, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 48, at end of first sentence of (2), substituted "the calendar year . . ." for "a period beginning July 1 and ending October 31".

Chapter 277, in (3), substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Increased the special fuel permit from $20 to $30.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-313. Department to furnish forms. Special fuel temporary permits, nonresident temporary permits, remittance forms, and any other necessary papers for the accounting and enforcement of 15-70-311 through 15-70-314 shall be furnished by the department.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975; R.C.M. 1947, 84-1843(part).

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-314. Penalty for operation without temporary permit — compliance bond — policy continued. (1) Any unlicensed user of special fuel vehicles operating within the state of Montana without making application for said temporary permit and paying the specified fee shall be guilty of committing a misdemeanor and upon conviction be fined $50.

(2) Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the department and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961; amd. Sec. 89, Ch. 516, L. 1973; R.C.M. 1947, 84-1844.

Cross-References

Enforcement by Department of Highways personnel, 61-12-206.

15-70-315 through 15-70-320 reserved.

15-70-321. Tax on diesel fuel and volatile liquids. The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 17 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any and all engines, including stationary engines, used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipal, or other political subdivisions.

History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973; amd. Sec. 2, Ch. 473 L. 1975; amd. Sec. 1, Ch. 514, L. 1975; amd. Sec. 4, Ch. 390, L. 1977; R.C.M. 1947, 84-1832.1; amd. Sec. 3, Ch. 632, L. 1979; amd. Sec. 2, Ch. 624, L. 1983.

Compiler's Comments

1983 Amendment: Raised tax on gallon from 10 cents to 17 cents; 1 cent of raise is attributable to the making permanent of 1-cent motor fuels tax increment of 1979 that was to have terminated July 1, 1983 (sec. 3, Ch. 632, L. 1979).

Cross-References

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-322. Tax on use of special fuels. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways equivalent to the lawful tax levied on motor fuel under 15-70-321. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter provided. The United States, Montana and all other states, and the counties, incorporated cities and towns, and school districts of this state are exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971; amd. Sec. 80, Ch. 516, L. 1973; R.C.M. 1947, 84-1832; amd. Sec. 1, Ch. 610, L. 1979.

Cross-References

Definition of "school district", 20-15-403.

15-70-323. Special fuel dealer's and special fuel user's records. (1) Every special fuel dealer, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep such records, receipts, and invoices and other pertinent papers with respect thereto as the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) Said records, receipts, invoices, and other pertinent papers shall be required to be kept for a period of at least 5 years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957; amd. Sec. 82, Ch. 516, L. 1973; R.C.M. 1947, 84-1834.

15-70-324. Examination of records — enforcement of part. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing

special fuel as defined in this part and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they shall be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and shall be, if requested by the department, accompanied by the special fuel dealer or special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel dealer or a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such special fuel has been delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state.

History: **En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; R.C.M. 1947, 84-1838(part); amd. Sec. 2, Ch. 16, L. 1983.**

Compiler's Comments

1983 Amendment: At end of (2), substituted "furnished at the direction of the department . . . if requested by the department . . . special fuel user." for "furnished to the department for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of said examination is the payment of a tax deficiency."

15-70-325. Returns. (1) For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer shall file with the department a monthly tax return and each special fuel user shall file with the department, on forms prescribed by said department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that such user's annual tax liability is or will be $100 or less.

(3) Such user shall make an annual report and return to the department on forms prescribed by said department, on or before January 31 of each year. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file quarterly returns as herein provided. Such return, annual or quarterly, shall contain a declaration by the person making the same to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and

effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this part.

(4) If a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

(5) The special fuel dealer or special fuel user shall file the return on or before the last day of the next succeeding calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing but not to exceed 30 days.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(part (a)); amd. Sec. 1, Ch. 299, L. 1979; amd. Sec. 7, Ch. 599, L. 1979.

15-70-326. Computation. The tax imposed by this part shall be computed as follows:

(1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle;

(2) with respect to special fuel as to which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by him in the propulsion of motor vehicles on the highways of this state.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(b).

15-70-327. Payment — deductions. The tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 15-70-301 of special fuels during the preceding period. A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 15-70-321 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(c); amd. Sec. 8, Ch. 599, L. 1979.

15-70-328. Credits. (1) Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

(2) Any licensed special fuel user who purchases a temporary special fuel permit and thereafter applies for a special fuel vehicle permit for the same vehicle in less than 11 days after the temporary permit is issued shall receive credit in the amount of the temporary permit fee.

History: En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967; R.C.M. 1947, 84-1836.

15-70-329. Procedures for credits. (1) Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under 15-70-328 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the dealer or user. A warrant shall be drawn upon the state treasurer for the amount of such claim, and same shall be paid in the same manner as other claims against the state are paid.

(2) In case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within 12 months from the date his special fuel license became canceled, the department shall be under no obligation to make a refund.

History: En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967; amd. Sec. 84, Ch. 516, L. 1973; R.C.M. 1947, 84-1837.

15-70-330. Penalties for refusal or failure to file return or pay tax when due. (1) In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is hereby imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Where a special fuel dealer or a special fuel user files a return but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid interest at the rate of 1% per month or fraction thereof from the date such tax was due to the date of payment in full thereof.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(d), (e); amd. Sec. 1, Ch. 591, L. 1979.

15-70-331. Deficiency. If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction thereof from the date the return was due.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(f).

15-70-332. Determination if no return made. (1) If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(g).

15-70-333. Fraudulent return. If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this part, there shall be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction thereof on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(h).

15-70-334. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(k); amd. Sec. 39, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-70-335. Statute of limitation. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed under 15-70-331 within 5 years after the 25th day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 5 years after the return is filed, whichever period expires later.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(i).

15-70-336. Criminal penalties. (1) Any person violating any provision of 15-70-101 or this part, except 15-70-311 through 15-70-314 and

15-70-321, is guilty of a misdemeanor unless the act is by any other law of this state declared to be a felony and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both such fine and imprisonment.

(2) The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this part.

History: En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957; R.C.M. 1947, 84-1839.

Part 4 reserved

Part 5

Alcohol Tax Incentive and Administration

15-70-501. Short title. This part may be cited as the "Alcohol Tax Incentive and Administration Act of 1983".

History: En. Sec. 1, Ch. 649, L. 1983.

15-70-502. Purpose. The purpose of this part is to establish schedules for the tax incentive for the production of alcohol to be blended for gasohol and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of alcohol fuel production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.

History: En. Sec. 2, Ch. 649, L. 1983.

15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol:

(a) engages in the business of producing alcohol for sale, use, or distribution in this state; or

(b) imports alcohol for sale, use, or distribution in this state.

(2) "Department" means the department of revenue.

(3) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.

History: En. Sec. 3, Ch. 649, L. 1983.

15-70-504 through 15-70-510 reserved.

15-70-511. Licensing of alcohol distributors. Every alcohol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth such information as may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.

History: En. Sec. 4, Ch. 649, L. 1983.

15-70-512. Distributor's statement. Each alcohol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by him, that includes the following:

(1) the number of gallons of alcohol manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each gasohol dealer to whom he sold alcohol and the number of gallons sold to each dealer; and

(3) such other information as the department may reasonably require to administer the tax laws of this state.

History: En. Sec. 5, Ch. 649, L. 1983.

15-70-513. Recordkeeping requirements. The records of each alcohol distributor and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and such other information as the department may require.

History: En. Sec. 6, Ch. 649, L. 1983.

15-70-514. Examination of records. The department or its authorized representative may examine the books, papers, records, and equipment of any alcohol distributor or gasohol dealer.

History: En. Sec. 7, Ch. 649, L. 1983.

15-70-515 through 15-70-520 reserved.

15-70-521. Denaturing alcohol — refund authorized. Any alcohol distributor who, for the purpose of denaturing alcohol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.

History: En. Sec. 8, Ch. 649, L. 1983.

15-70-522. Tax incentive for production of alcohol. (1) There is a tax incentive payable to alcohol distributors for distilling alcohol to be blended with gasoline for sale as gasohol, provided the alcohol is distilled in Montana from Montana agricultural products. Payment shall be made by the department of revenue out of the amount collected under 15-70-204.

(2) Except as provided in subsection (3), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

(a) beginning July 1, 1983, 70 cents per gallon;

(b) beginning April 1, 1985, 50 cents per gallon;

(c) beginning April 1, 1986, 30 cents per gallon; and

(d) beginning April 1, 1989, and thereafter, there is no tax incentive.

(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:

(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold, the tax incentive for alcohol shall be 50 cents per gallon, effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold.

(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold.

(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold.

(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol, according to the information contained in gasoline distributors' returns.

History: En. Sec. 9, Ch. 649, L. 1983.

15-70-523. Application for payment of tax incentive. (1) The claimant shall apply for payment of tax incentive by signed statement, on a form furnished by the department, accompanied by the original production records and invoices issued to the gasohol dealer at the time of sale and delivery, showing total gallons of alcohol sold.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.

(3) The payment of the tax incentives shall be reduced by the amount of tax provided for in 15-70-204(3) that is due on alcohol to be blended for gasohol.

History: En. Sec. 10, Ch. 649, L. 1983.

15-70-524 through 15-70-526 reserved.

15-70-527. Penalty for failure to file. Any alcohol distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction must be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 11, Ch. 649, L. 1983.

CHAPTER 71

LICENSE TAX ON VEHICLES PROPELLED BY LIQUEFIED PETROLEUM GAS

Part 1 — General Provisions

Section
15-71-101. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas.
15-71-102. Temporary trip permit required.
15-71-103. Certificate and fee nontransferable.

15-71-104. Disposition of funds.
15-71-105. Violations and penalties.

Chapter Cross-References
Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Part 1

General Provisions

15-71-101. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas. (1) The department of highways shall, under the rules issued by the department of revenue, collect or cause to be collected from owners or operators of motor vehicles powered by any liquefied petroleum gas an annual license tax fee on each such vehicle, which license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually according to the following schedule:

(a) passenger cars and pickups whose licensed gross vehicle weight is 10,000 pounds or less, $60;

(b) motor trucks and truck tractors whose licensed gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $80;

(c) motor trucks and truck tractors whose licensed gross vehicle weight is 18,000 pounds or more and less than 48,000 pounds, $200;

(d) motor trucks and truck tractors whose licensed gross vehicle weight is 48,000 pounds or more, $1,000.

(2) Upon payment of the tax required by this section, the department of highways shall provide a certificate to be carried in each vehicle, which is valid for a period no less than a calendar quarter or for such further calendar period for which the tax is paid.

History: **En. 84-1862 by Sec. 3, Ch. 473, L. 1975; amd. Sec. 1, Ch. 47, L. 1977; R.C.M. 1947, 84-1862.**

15-71-102. Temporary trip permit required. (1) Upon entering the state, a nonresident operating any motor vehicle powered by liquefied petroleum gas is required to purchase a liquid petroleum gas temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe.

(2) A temporary liquid petroleum gas permit shall cost $20. The permit is valid for a period of time not to exceed 72 hours and will be automatically void if the vehicle leaves the state during this period. Special liquid petroleum gas permits, remittance forms, and any other papers necessary for the enforcement of this chapter shall be furnished by the department of highways.

History: **En. 84-1862.1 by Sec. 2, Ch. 47, L. 1977; R.C.M. 1947, 84-1862.1.**

15-71-103. Certificate and fee nontransferable. The identifying certificate and license fee paid for each vehicle shall not be transferable on the sale or change of ownership to any person or vehicle other than that for which it was issued, with one exception. If the owner of a vehicle for which a current certificate has been issued replaces the vehicle, the remaining amount of tax paid for the unused calendar period may be credited to the tax payable for the issuance of a new certificate. The credit may not exceed the amount applicable to the unused period, and a refund is not allowed.

History: En. 84-1863 by Sec. 4, Ch. 473, L. 1975; amd. Sec. 3, Ch. 47, L. 1977; R.C.M. 1947, 84-1863.

15-71-104. Disposition of funds. All taxes collected under this chapter shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the state special revenue fund to the credit of the department of highways.

History: En. 84-1865 by Sec. 6, Ch. 473, L. 1975; R.C.M. 1947, 84-1865; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

15-71-105. Violations and penalties. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both such fine and imprisonment. The fine and imprisonment provided in this section shall be in addition to any other penalty imposed by any other provision in this chapter.

History: En. 84-1864 by Sec. 5, Ch. 473, L. 1975; R.C.M. 1947, 84-1864.

TITLE 16

ALCOHOL AND TOBACCO

Ch.
1. Administration and Taxation.
2. State Liquor Stores.
3. Control of Liquor, Beer, and Wine.
4. License Administration.
5. Identification Cards. (Repealed. Sec. 2, Ch. 26, L. 1979)
6. Enforcement.
Chapters 7 through 9 reserved.
10. Regulation of Cigarette Marketing.
11. Taxation of Tobacco Products.

CHAPTER 1

ADMINISTRATION AND TAXATION

Part 1 — General Provisions

Section
16-1-101. Citation — declaration of policy — subject matters of regulation.
16-1-102. Policy as to sale of beer.
16-1-103. Policy as to retail sale of liquor.
16-1-104. Intent and construction of code.
16-1-105. Divisions of code.
16-1-106. Definitions.

Part 2 — Scope of Code and Exemptions

16-1-201. Acts not covered by code.
16-1-202. Preparations not subject to code.
16-1-203. Health professions exemption.
16-1-204. Licensed hospital or health care facility.
16-1-205. Local option.

Part 3 — Department of Revenue Powers, Duties, and Limitations

16-1-301. Administration of code.
16-1-302. Functions, powers, and duties of department.
16-1-303. Department rules.
16-1-304. Prohibited acts within division.
16-1-305. Title to property and moneys — administrative expenses.
16-1-306. Revenue to be paid to state treasurer.

Part 4 — Taxation of Alcoholic Beverages

16-1-401. Liquor excise tax.
16-1-402. Payment of excise tax by carriers.
16-1-403. Excise tax accounting methods — report forms.
16-1-404. License tax on liquor — amount — distribution of proceeds.
16-1-405. Use of license tax proceeds.
16-1-406. Tax on imported beer.
16-1-407. Barrelage tax on beer brewed in state.
16-1-408. Additional tax.

16-1-409. Failure to make beer tax returns — penalties.
16-1-410. Tax revenue allocation.
16-1-411. Tax on wine.

Part 1

General Provisions

16-1-101. Citation — declaration of policy — subject matters of regulation. (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, and distribution of liquor within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, and its provisions shall be construed for the accomplishment of such purposes.

History: En. Sec. 1, Ch. 105, L. 1933; re-en. Sec. 2815.60, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1951; Sec. 4-101, R.C.M. 1947; amd. and redes. 4-1-101 by Sec. 1, Ch. 387, L. 1975; R.C.M. 1947, 4-1-101.

16-1-102. Policy as to sale of beer. It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code and which contains not more than 7% of alcohol by weight, shall be controlled and regulated as provided under this code. Beer, porter, ale, stout, and malt liquors containing more than 7% of alcohol by weight and which are defined as "liquor" shall be subject to the regulations and controls provided for liquor.

History: En. Sec. 1, Ch. 106, L. 1933; re-en. Sec. 2815.10, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1951; Sec. 4-301, R.C.M. 1947; amd. and redes. 4-1-102 by Sec. 45, Ch. 387, L. 1975; R.C.M. 1947, 4-1-102.

16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure the entire control of the sale of liquor in the department of revenue. It is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state.

History: En. Preamble, Ch. 84, L. 1937; Sec. 4-401, R.C.M. 1947; amd. and redes. 4-1-103 by Sec. 78, Ch. 387, L. 1975; R.C.M. 1947, 4-1-103; amd. Sec. 1, Ch. 5, L. 1979.

16-1-104. Intent and construction of code. The purpose and intent of this code are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this code, and every section and provision of this code shall be construed accordingly. The provisions of this code dealing with the importation, sale, and disposition of liquor within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state.

History: En. Sec. 99, Ch. 105, L. 1933; re-en. Sec. 2815.159, R.C.M. 1935; Sec. 4-233, R.C.M. 1947; amd. and redes. 4-1-104 by Sec. 42, Ch. 387, L. 1975; R.C.M. 1947, 4-1-104.

Cross-References

Statutory construction, Title 1, ch. 2.

16-1-105. Divisions of code. This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5 relates to identification cards. Chapter 6 relates to enforcement.

History: En. Sec. 3, Ch. 105, L. 1933; re-en. Sec. 2815.62, R.C.M. 1935; Sec. 4-103, R.C.M. 1947; amd. and redes. 4-1-105 by Sec. 2, Ch. 387, L. 1975; R.C.M. 1947, 4-1-105.

16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Rules" means rules published by the department pursuant to this code.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

(20) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(21) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

History: Ap.p. Sec. 110, Ch. 387, L. 1975; Sec. 4-1-107, R.C.M. 1947; Ap.p. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; Sec. 4-2-204, R.C.M. 1947; R.C.M. 1947, 4-1-107, 4-2-204(part); amd. Sec. 2, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 5, L. 1979; amd. Sec. 2, Ch. 699, L. 1979; amd. Sec. 1, Ch. 519, L. 1981; amd. Sec. 1, Ch. 595, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (15), which read: "Public road or highway means the same as in 15-70-301(5).".

1981 Amendment: Added subsection (15) (now deleted) defining "public road or highway".

Part 2

Scope of Code and Exemptions

16-1-201. Acts not covered by code. (1) Nothing in this code shall prevent any brewer, distiller, or other person, duly licensed under the provisions of any statute of the United States of America for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

(2) It is hereby declared to be the policy of the state of Montana that the manufacture of liquor, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, shall be authorized and permitted by any brewer, distiller, rectifier, or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States, provided the department may make such rules as the department deems necessary with respect thereto not inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, Title 27, United States Code, sections 201 through 212, inclusive, or regulations issued under the provisions of the Internal Revenue Code, Title 26, United States Code, sections 5001 through 5693, inclusive.

(3) Nothing in this code shall prevent:

(a) the sale of liquor by any person to the department;

(b) the purchase, importation, and sale of liquor by the department for the purposes of and in accordance with this code.

History: En. Sec. 35, Ch. 105, L. 1933; re-en. Sec. 2815.94, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1965; Sec. 4-140, R.C.M. 1947; amd. and redes. 4-1-202 by Sec. 14, Ch. 387, L. 1975; R.C.M. 1947, 4-1-202.

Cross-References

Municipal regulation — location of distilleries, 7-21-4204.

16-1-202. Preparations not subject to code. (1) Subject to the provisions of this section, nothing in this code shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase, or consumption of any:

(a) extract, essence, or tincture or other preparation containing alcohol which is prepared according to a formula of the United States Pharmacopoeia or according to a formula approved of by the department; or

(b) proprietary or patent medicine prepared according to a formula approved of by the department.

(2) The department, if of opinion that any such proprietary or patent medicine, extract, essence, tincture, or preparation which contains alcohol or any other preparation of a solid, semisolid, or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state or the possession of the same for sale by retail within the state, except by a state liquor store or by persons duly licensed by the department to keep and sell the same by retail in accordance with this code and the regulations made thereunder.

(3) The department shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture, or preparation of the prohibition.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part).

16-1-203. Health professions exemption. A physician, dentist, veterinarian, or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol and sells or charges a fee does not violate the prohibitions of this code.

History: En. 4-1-204 by Sec. 111, Ch. 387, L. 1975; R.C.M. 1947, 4-1-204.

16-1-204. Licensed hospital or health care facility. Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer liquor purchased by him to any patient or inmate of the institution and may charge for the liquor so administered.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part).

16-1-205. Local option. The electors of a county may, by approving an initiative as provided under Title 7, chapter 5, part 22, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under Title 7, chapter 5, part 1.

History: En. 4-1-206 by Sec. 112, Ch. 387, L. 1975; R.C.M. 1947, 4-1-206; amd. Sec. 392, Ch. 571, L. 1979.

Part 3

Department of Revenue Powers, Duties, and Limitations

16-1-301. Administration of code. The department shall have the powers and duties to administer the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all state liquor stores.

History: En. Sec. 4, Ch. 105, L. 1933; re-en. Sec. 2815.63, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; Sec. 4-107, R.C.M. 1947; amd. and redes. 4-1-301 by Sec. 3, Ch. 387, L. 1975; R.C.M. 1947, 4-1-301.

16-1-302. Functions, powers, and duties of department. The department shall have the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors and table wine in the manner set forth in this code;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities within which state liquor stores shall be established throughout the state and the situation of the stores within every such municipality;

(4) to lease, furnish, and equip any building or land required for the operation of this code;

(5) to buy or lease all plants and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

(6) to employ store managers and also every officer, investigator, clerk, or other employee required for the operation or carrying out of this code and

to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under and in pursuance to this code;

(9) without in any way limiting or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the department for the purpose of carrying into effect the provisions of this code or the rules made thereunder.

History: En. Sec. 8, Ch. 105, L. 1933; re-en. Sec. 2815.67, R.C.M. 1935; amd. Sec. 3, Ch. 154, L. 1965; Sec. 4-112, R.C.M. 1947; amd. and redes. 4-1-302 by Sec. 5, Ch. 387, L. 1975; R.C.M. 1947, 4-1-302; amd. Sec. 6, Ch. 699, L. 1979.

16-1-303. Department rules. (1) The department may make such rules not inconsistent with this code as to the department seem necessary for carrying out the provisions of this code and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following:

(a) regulating the equipment and management of state stores and warehouses in which liquor or table wine is kept or sold and prescribing the books and records to be kept therein;

(b) prescribing the duties of the employees of the liquor division and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and the furnishing of liquor to state stores established under this code;

(d) determining the classes, varieties, and brands of liquor and table wine to be kept for sale at any state store;

(e) prescribing, subject to this code, the hours during which state liquor stores shall be kept open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor and table wine kept for sale under this code;

(g) prescribing forms to be used for the purpose of this code or of the rules made thereunder and the terms and conditions in permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made thereon to the division and providing for inspection of the records so kept;

(i) prescribing the manner of giving and serving notices required by this code or the rules thereunder;

(j) prescribing the fees payable in respect of permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules made thereunder;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of a liquor or beer license and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(l) specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

(m) specifying and regulating the time and periods when and the manner, methods, and means by which vendors and brewers shall deliver liquor under this code and the time and periods when and the manner, methods, and means by which liquor, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell liquor or beer under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing.

History: En. Sec. 9, Ch. 105, L. 1933; re-en. Sec. 2815.68, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965; Sec. 4-113, R.C.M. 1947; amd. and redes. 4-1-303 by Sec. 6, Ch. 387, L. 1975; R.C.M. 1947, 4-1-303; amd. Sec. 7, Ch. 699, L. 1979; amd. Sec. 1, Ch. 47, L. 1983.

Compiler's Comments

1983 Amendment: Deleted (2)(g), which read: "prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code".

Cross-References

Adoption and publication of administrative rules, 2-4-301.

16-1-304. Prohibited acts within division. (1) No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor or table wine stores, may be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor or table wine, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the division or any employee of the state may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering liquor or table wine for sale to the state or division pursuant to this code.

(3) No person selling or offering for sale to or purchasing liquor or table wine from the state liquor division may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the division, to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the division from receiving samples of liquor or table wine for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor or table wine to the Montana liquor division shall submit, without cost to the division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of such merchandise to the division.

(b) When a brand of liquor or table wine has been accepted for testing by the division, the division shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The division shall maintain written records of all samples received. The records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other alcoholic beverage may be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor division for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

History: En. Sec. 48, Ch. 105, L. 1933; re-en. Sec. 2815.107, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971; Sec. 4-153, R.C.M. 1947; amd. and redes. 4-1-304 by Sec. 18, Ch. 387, L. 1975; amd. Sec. 1, Ch. 496, L. 1977; R.C.M. 1947, 4-1-304; amd. Sec. 8, Ch. 699, L. 1979.

Cross-References

Government employee standards of conduct, Title 2, ch. 2, parts 1 and 2.

16-1-305. Title to property and moneys — administrative expenses. All property, whether real or personal, all moneys acquired, administered, possessed, or received by the department, and all profits earned in the administration of this code shall be the property of the state. All expenses, debts, and liabilities incurred by the department in connection with the administration of this code shall be paid by the department from the moneys received by the department under such administration.

History: En. Sec. 91, Ch. 105, L. 1933; re-en. Sec. 2815.151, R.C.M. 1935; Sec. 4-226, R.C.M. 1947; amd. and redes. 4-1-306 by Sec. 40, Ch. 387, L. 1975; R.C.M. 1947, 4-1-306.

16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-410, all fees, charges, taxes, and revenues collected by or under authority of the department shall be deposited with the state treasurer. He shall deposit the funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; re-en. Sec. 2815.50, R.C.M. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971; Sec. 4-347, R.C.M. 1947; amd. and redes. 4-1-407 by Sec. 72, Ch. 387, L. 1975; amd. Sec. 1, Ch. 286, L. 1977; R.C.M. 1947, 4-1-407.

Part 4

Taxation of Alcoholic Beverages

16-1-401. Liquor excise tax. The department is hereby authorized and directed to charge, receive, and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of 16% of the retail selling price on all liquor sold and delivered. The department shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums collected and received not later than the 10th day of each and every month.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957; Approved at referendum, Nov. 4, 1958; Sec. 4-417, R.C.M. 1947; amd. and redes. 4-1-403 by Sec. 94, Ch. 387, L. 1975; R.C.M. 1947, 4-1-403.

16-1-402. Payment of excise tax by carriers. (1) Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the department the excise taxes and state markup which would be applicable to such liquor if purchased from the state liquor store.

(2) The amount of such excise taxes and state markup payable shall be determined by multiplying the following factors:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

(c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and

(d) the applicable excise tax and state markup rates.

(3) From said product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

History: En. 4-4-110 by Sec. 115, Ch. 387, L. 1975; R.C.M. 1947, 4-4-110.

16-1-403. Excise tax accounting methods — report forms. (1) The method provided in 16-1-402 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state. Any carrier aggrieved by the application of the method may petition the department for use of some other method. Thereupon, if the department finds that the application of the method will be unjust to the carrier, it may allow the use of the method petitioned for by the carrier or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

History: En. 4-4-111 by Sec. 116, Ch. 387, L. 1975; R.C.M. 1947, 4-4-111; amd. Sec. 3, Ch. 5, L. 1979.

16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department is hereby authorized and directed to charge, receive, and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of 10% of the retail selling price on all liquor sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said 10% license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department shall retain in a separate account the amount of such 10% license tax so received. Thirty percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (2). Four and one-half percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues shall be deposited in the state special revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. The department shall pay quarterly to each county treasurer the proportion of the license tax due each county to be allocated to the incorporated cities and towns of the county.

(2) The license tax proceeds allocated to the county under subsection (1) for use by cities and towns shall be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns shall be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(3) The license tax proceeds that are allocated to the department of institutions for the treatment, rehabilitation, and prevention of alcoholism shall be credited quarterly to the department of institutions. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder shall be distributed as provided in 53-24-206.

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969; amd. Sec. 17, Ch. 302, L. 1974; Sec. 4-240, R.C.M. 1947; amd. and redes. 4-1-401 by Sec. 44, Ch. 387, L. 1975; amd. Sec. 8, Ch. 414, L. 1977; R.C.M. 1947, 4-1-401; amd. Sec. 6, Ch. 711, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Utilization of tax proceeds used for alcoholism programs, 53-24-108.

16-1-405. Use of license tax proceeds. The license tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities, towns, and counties and shall be expended by said incorporated cities, towns, and counties for law enforcement and the regulation and control of the sale of liquor and the use thereof.

History: En. Sec. 2, Ch. 217, L. 1957; Sec. 4-241, R.C.M. 1947; redes. 4-1-402 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-1-402.

16-1-406. Tax on imported beer. A tax of $3 per barrel of 31 gallons is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels or in barrels of more or less capacity than 31 gallons, the quantity content shall be ascertained and computed by the department in determining the amount of tax due.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part).

16-1-407. Barrelage tax on beer brewed in state. In addition to the annual license tax imposed by 16-4-501, a tax of $3 per barrel of 31 gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the department under the provisions of 16-3-211.

History: En. 4-1-405 by Sec. 113, Ch. 387, L. 1975; R.C.M. 1947, 4-1-405.

16-1-408. Additional tax. An additional tax of $1 per barrel is levied and imposed as provided by 16-1-406, and such additional tax is also to be levied and imposed at the same rate upon beer manufactured within the state. The additional tax of $1 is to be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part).

Cross-References

Utilization of tax proceeds used for alcoholism programs, 53-24-108.

16-1-409. Failure to make beer tax returns — penalties. (1) If any brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 through 16-1-408 shall fail, neglect, or refuse to make any return required by this code or shall fail to make payment of such tax within the time herein provided, the department shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler.

(2) The department shall add to the amount of tax due a penalty of 5% thereof for the first failure, willful neglect, or refusal; 10% for the second; 15% for the third; and 25% for the fourth and each subsequent failure, neglect, or refusal; which shall be in addition to the 5% penalty provided for nonpayment of such tax within the time provided.

(3) Said tax and the penalties added thereto shall bear interest at the rate of 1% per month from the date such returns should have been made and said tax paid.

(4) The department shall then proceed to collect such tax with penalties and interest. Upon request of the department it shall be the duty of the

attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax.

(5) If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

(6) No action shall be maintained to enjoin the collection of such tax or any part thereof.

(7) Any tax owed by a brewer or wholesaler under this code not paid within the time provided shall be delinquent, and a penalty of 5% shall be added thereto, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Any brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow such examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed shall be deemed guilty of having committed a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000.

History: (1) thru (6)En. Sec. 3, Ch. 220, L. 1939; Sec. 4-325, R.C.M. 1947; amd. and redes. 4-3-217 by Sec. 60, Ch. 387, L. 1975; Sec. 4-3-217, R.C.M. 1947; (7)En. Sec. 16, Ch. 106, L. 1933; re-en. Sec. 2815.25, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1939; Sec. 4-320, R.C.M. 1947; amd. and redes. 4-6-403 by Sec. 58, Ch. 387, L. 1975; Sec. 4-6-403, R.C.M. 1947; R.C.M. 1947, 4-3-217, 4-6-403; amd. Sec. 40, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the first sentence of (5) for provision stating that the department of revenue had a lien on all property of the brewer or wholesaler for all amounts due under this title; deleted the provision at the end of (5) that the liens provided for in this section are enforced in the same manner as other liens are enforced; deleted a sentence at the end of (6) that provided for the release of the lien upon payment of the amount due; deleted former subsection (7) that allowed the department to release the lien to enable the brewer or wholesaler to dispose of his property in order to pay the amount due.

16-1-410. Tax revenue allocation. All revenue received from taxes on beer under 16-1-406 through 16-1-408 over and above $1.50 per barrel of 31 gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971; Sec. 4-347.1, R.C.M. 1947; amd. and redes. 4-1-408 by Sec. 73, Ch. 387, L. 1975; R.C.M. 1947, 4-1-408; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

16-1-411. Tax on wine. (1) A tax of 20 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department shall be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) shall be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 4 cents, one-third to the state special revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism, one-third to the counties, based on population, for the purpose established in 16-1-404, and one-third to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns.

History: En. Sec. 9, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 5, Ch. 699, L. 1979; amd. Sec. 1, Ch. 219, L. 1981; amd. Sec. 1, Ch. 241, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue account.

1981 Amendments: Chapter 219 added subsection (2)(b) and redesignated former subsection (2)(b) as (3); inserted "in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b)" and "as follows" into the introductory clause of (3); deleted former subsection (3) relating to the disposition of tax collected on table wines imported by the department.

Chapter 241 changed the time for payment of table wine tax from the 15th day of the month following receipt at the warehouse to the month following sale from the warehouse; and added the last sentence in (2)(a).

CHAPTER 2

STATE LIQUOR STORES

Part 1 — Operation of Stores

Section

16-2-101. Establishment of state liquor stores — kinds and prices of liquor.
16-2-102. Repealed.
16-2-103. Duplicate invoices of sales required.
16-2-104. Hours.
16-2-105. Place and time of selling liquor.
16-2-106. Purchase price in advance.
16-2-107. No open liquor container or liquor consumption on premises of state store.
16-2-108. Disposition of money received.

Part 2 — Price of Liquor

16-2-201. Reduction for quantity sales of liquor.

16-2-202. Price of liquor made in Montana.
16-2-203. Department sales to licensees.

Part 3 — Sale of Table Wine

16-2-301. Retail selling price on table wine sold by the state.
16-2-302. State distribution.
16-2-303. Department prohibited from engaging in unfair competition.

Part 1

Operation of Stores

16-2-101. Establishment of state liquor stores — kinds and prices of liquor. (1) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the rules made thereunder.

(2) The department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees.

(3) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor may be sold, and prices shall be the same at all state stores.

History: En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; R.C.M. 1947, 4-2-101(part); amd. Sec. 1, Ch. 157, L. 1979.

16-2-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 14, Ch. 105, L. 1933; re-en. Sec. 2815.73, R.C.M. 1935; Sec. 4-119, R.C.M. 1947; redes. 4-2-102 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 2, Ch. 496, L. 1977; R.C.M. 1947, 4-2-102.

16-2-103. Duplicate invoices of sales required. (1) The state liquor store shall, upon each sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased, as provided by the department, a copy of which shall be delivered to the licensee and one copy retained at such store.

(2) The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee, and the number of the license, with such other information as may be required by the department.

(3) The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents, and employees of the department.

History: En. Sec. 16, Ch. 84, L. 1937; Sec. 4-418, R.C.M. 1947; amd. and redes. 4-2-205 by Sec. 95, Ch. 387, L. 1975; R.C.M. 1947, 4-2-205.

16-2-104. Hours. (1) State liquor stores shall be and remain open during such period of the day as the department shall deem advisable. The stores shall be closed for the transaction of business on legal holidays and between the close of normal business Saturday p.m. up to the opening of normal business Tuesday a.m. as set by department rule.

(2) No sale or delivery of liquor shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor:

(a) on any holiday recognized by state law;

(b) during such other period and on such other days as the department may direct.

History: (1)En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; Sec. 4-2-101, R.C.M. 1947; (2)En. Sec. 16, Ch. 105, L. 1933; re-en. Sec. 2815.75, R.C.M. 1935; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971; Sec. 4-121, R.C.M. 1947; amd. and redes. 4-2-104 by Sec. 11, Ch. 387, L. 1975; Sec. 4-2-104, R.C.M. 1947; R.C.M. 1947, 4-2-101(part), 4-2-104.

Cross-References

Legal holidays in Montana, 1-1-216.

16-2-105. Place and time of selling liquor. No store manager and no person acting as the clerk or servant of or in any capacity for any manager shall sell liquor in any other place or at any other time or otherwise than as authorized by this code and the rules.

History: En. Sec. 47, Ch. 105, L. 1933; re-en. Sec. 2815.106, R.C.M. 1935; Sec. 4-152, R.C.M. 1947; amd. and redes. 4-2-105 by Sec. 17, Ch. 387, L. 1975; R.C.M. 1947, 4-2-105.

16-2-106. Purchase price in advance. A store manager may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

History: En. Sec. 12, Ch. 105, L. 1933; re-en. Sec. 2815.71, R.C.M. 1935; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969; Sec. 4-116, R.C.M. 1947; amd. and redes. 4-2-106 by Sec. 8, Ch. 387, L. 1975; R.C.M. 1947, 4-2-106.

16-2-107. No open liquor container or liquor consumption on premises of state store. No officer, clerk, or agent of the department employed in a state store shall allow any liquor container to be opened on the premises of a state store or allow any liquor to be consumed on the premises of a state store, nor shall any person open a liquor container or consume any liquor on such premises.

History: En. Sec. 15, Ch. 105, L. 1933; re-en. Sec. 2815.74, R.C.M. 1935; Sec. 4-120, R.C.M. 1947; amd. and redes. 4-2-107 by Sec. 10, Ch. 387, L. 1975; R.C.M. 1947, 4-2-107; amd. Sec. 2, Ch. 47, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "agent" for "servant"; inserted "allow any liquor container to be opened on the premises of a state store or" after "a state store shall"; inserted "open a liquor container or" before "consume any liquor".

16-2-108. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the enterprise fund in the state treasury to the credit of the department. The department is hereby authorized to purchase liquor from moneys deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department may ever be or become a debt or claim against the state of Montana but shall be payable by the department solely from funds derived from the operation of state liquor stores. The department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses collected by it and also the net proceeds from the operation of state liquor stores.

History: En. Sec. 94, Ch. 105, L. 1933; re-en. Sec. 2815.154, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963; Sec. 4-229, R.C.M. 1947; amd. and redes. 4-1-406 by Sec. 41, Ch. 387, L. 1975; amd. Sec. 1, Ch. 398, L. 1977; R.C.M. 1947, 4-1-406; amd. Sec. 3, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

Part 2

Price of Liquor

16-2-201. Reduction for quantity sales of liquor. Reduction of 5% of the retail price of liquor sold at the state liquor store shall be made by the department for sales of liquor to any person purchasing liquor in unbroken case lots. No other reduction shall be made by the department for quantity sales of liquor.

History: En. Sec. 1, Ch. 185, L. 1943; amd. Sec. 1, Ch. 334, L. 1975; Sec. 4-117, R.C.M. 1947; amd. and redes. 4-2-201 by Sec. 9, Ch. 387, L. 1975; R.C.M. 1947, 4-2-201.

16-2-202. Price of liquor made in Montana. In computing the selling price of all liquor sold and delivered by the department, the department is authorized and directed to designate and establish the state markup on all liquor either manufactured, distilled, rectified, bottled, or processed in Montana at 10% less than the amount of markup of products of out-of-state manufacturers, distillers, rectifiers, and processors.

History: En. 4-114.1 by Sec. 1, Ch. 359, L. 1974; Sec. 4-114.1, R.C.M. 1947; redes. 4-2-202 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-2-202.

16-2-203. Department sales to licensees. The department may sell through its stores to licensees licensed under this code all kinds of liquor, wine containing more than 14% alcohol by volume, and cordials kept in stock, at the posted price thereof in the store in which the liquor is sold. All sales shall be upon a cash basis.

History: En. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; R.C.M. 1947, 4-2-204(part); amd. Sec. 10, I.M. No. 81, app. Nov. 7, 1978.

Part 3

Sale of Table Wine

16-2-301. Retail selling price on table wine sold by the state. The retail selling price at which table wine is sold by the department shall be computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department.

History: **En. Sec. 9, Ch. 699, L. 1979.**

16-2-302. State distribution. The department may import and distribute one or more named table wines to one or more designated state liquor stores, in the same manner as if the table wine contained more than 14% alcohol by volume.

History: **En. Sec. 10, Ch. 699, L. 1979.**

16-2-303. Department prohibited from engaging in unfair competition. (1) The department in engaging in the retail sale of table wine is subject to the provisions of Title 30, chapter 14, parts 1 and 2, except those provisions relating to enforcement and penalties.

(2) A person aggrieved by a violation of this section by the department may maintain an action to enjoin the alleged violation and for the recovery of damages in the district court of the district where the conduct complained of occurred or where the department's principal office is located.

History: **En. Sec. 11, Ch. 699, L. 1979.**

CHAPTER 3

CONTROL OF LIQUOR, BEER, AND WINE

Part 1 — Official Seal and Other Controls

Section
16-3-101. Liquor dispensed only in accordance with code.
16-3-102. Repealed.
16-3-103. Unlawful sales solicitation or advertising — exceptions.
16-3-104. Common carriers to purchase beer from brewer or wholesaler.
16-3-105. Restrictions on liquor in hotels.
16-3-106. Conveyance of liquors — opening liquor during transit forbidden.

Part 2 — Regulation of Brewers and Beer Wholesalers

16-3-201. Possession, manufacture, or disposal of beer in manner other than prescribed unlawful.
16-3-202. Beer sale by department prohibited.
16-3-203 through 16-3-210 reserved.
16-3-211. Monthly report of brewer — inspection of books and premises.
16-3-212. Brewers' sales to wholesalers lawful.
16-3-213. Brewers not to retail beer — original package exception.
16-3-214. Beer sales by brewers.
16-3-215 through 16-3-220 reserved.
16-3-221. Illegal acts by brewers.
16-3-222. Mandatory provisions of brewer-wholesaler contracts, agreements, and franchises.
16-3-223. Transfer of wholesaler's interest in business.
16-3-224. Contractual or franchise relationship — existence by actions.
16-3-225. Injunction to prevent franchise cancellation.
16-3-226. Brewer-wholesaler agreements filed with department.
16-3-227 through 16-3-229 reserved.
16-3-230. Out-of-state beer required to be shipped to wholesaler.
16-3-231. Monthly report of wholesaler.
16-3-232. Beer sales by wholesaler.
16-3-233. Sales to public by wholesaler unlawful.
16-3-234. Consumption of beer on wholesalers' premises unlawful.

16-3-235. Carriers' reports of beer transported.
16-3-236 through 16-3-240 reserved.
16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers and wholesalers unlawful — exceptions.
16-3-242. Financial interest in retailers prohibited.
16-3-243. Seven-day credit limitation.
16-3-244. Beer advertising limitations.

Part 3 — Retail Sales Restrictions

16-3-301. Unlawful purchases, sales, or deliveries.
16-3-302. Sale of beer by retailer for consumption on premises.
16-3-303. Sale of beer by retailer for consumption off premises.
16-3-304. Closing hours for licensed retail establishments.
16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed.
16-3-306. Proximity to churches and schools restricted.
16-3-307. Sale of liquor at less than posted price unlawful.
16-3-308. Refilling of liquor bottles prohibited.
16-3-309. Sales prohibited by ordinance.
16-3-310. Lapse of license for nonuse.

Part 4 — Sale of Table Wine

16-3-401. Public policy.
16-3-402. Importation of wine — records.
16-3-403. To whom table wine distributor may sell.
16-3-404. Monthly report of table wine distributor.
16-3-405. Carriers' reports of table wine transported.
16-3-406. Financial interest in retailers prohibited.

Part 1

Official Seal and Other Controls

16-3-101. Liquor dispensed only in accordance with code. No brewer, distiller, or manufacturer of liquor shall, within the state, by himself, his clerk, servant, or agent, give to any person any liquor except as may be permitted by and in accordance with the rules made under this code.

History: En. Sec. 46, Ch. 105, L. 1933; re-en. Sec. 2815.105, R.C.M. 1935; Sec. 4-151, R.C.M. 1947; redes. 4-3-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-101.

16-3-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 53, Ch. 105, L. 1933; re-en. Sec. 2815.112, R.C.M. 1935; Sec. 4-158, R.C.M. 1947; amd. and redes. 4-3-102 by Sec. 21, Ch. 387, L. 1975; R.C.M. 1947, 4-3-102; amd. Sec. 11, I.M. No. 81, app. Nov. 7, 1978.

16-3-103. Unlawful sales solicitation or advertising — exceptions. (1) No person within the state shall:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or hold himself out as such agent or intermediary unless permitted to do so under rules that shall be promulgated by the department to govern such activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees or club licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

(2) This section shall not apply to:

(a) the department, any act of the department, any state liquor store; or

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator, or employee.

History: En. Sec. 65, Ch. 105, L. 1933; re-en. Sec. 2815.124, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R.C.M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-103.

16-3-104. Common carriers to purchase beer from brewer or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer or wholesaler.

History: En. Sec. 37, Ch. 106, L. 1933; re-en. Sec. 2815.41, R.C.M. 1935; Sec. 4-338, R.C.M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975; R.C.M. 1947, 4-3-104.

16-3-105. Restrictions on liquor in hotels. Except in the case of liquor or beer kept or consumed in premises for which a license has been granted under the law and which form a part of a hotel, no person shall:

(1) keep or consume liquor in any part of a hotel other than a private guest room;

(2) keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; re-en. Sec. 2815.123, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R.C.M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-105.

16-3-106. Conveyance of liquors — opening liquor during transit forbidden. (1) It shall be lawful to carry or convey liquor to any state store and to and from any warehouse or depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules made thereunder and in accordance therewith, it shall be lawful for any common carrier or other person to carry or convey liquor sold by a vendor from a state store or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the same may be lawfully delivered under this code and the rules made thereunder.

(2) No common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing liquor or drink or use or allow to be drunk or used any liquor therefrom while being carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933; re-en. Sec. 2815.76, R.C.M. 1935; Sec. 4-122, R.C.M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975; R.C.M. 1947, 4-2-103.

Part 2

Regulation of Brewers and Beer Wholesalers

16-3-201. Possession, manufacture, or disposal of beer in manner other than prescribed unlawful. It shall be unlawful to manufacture, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than herein prescribed or other than in the manner permitted by this code.

History: En. Sec. 5, Ch. 106, L. 1933; re-en. Sec. 2815.14, R.C.M. 1935; Sec. 4-309, R.C.M. 1947; amd. and redes. 4-3-201 by Sec. 49, Ch. 387, L. 1975; R.C.M. 1947, 4-3-201.

16-3-202. Beer sale by department prohibited. The sale of beer by the department is hereby prohibited.

History: En. Sec. 4, Ch. 106, L. 1933; re-en. Sec. 2815.13, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1937; amd. Sec. 1, Ch. 186, L. 1947; Sec. 4-308, R.C.M. 1947; amd. and redes. 4-3-202 by Sec. 48, Ch. 387, L. 1975; R.C.M. 1947, 4-3-202.

16-3-203 through 16-3-210 reserved.

16-3-211. Monthly report of brewer — inspection of books and premises. Every brewer licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured by him and the amount sold by him in the previous month and of his inventory. The department shall have the right at any time to make an examination of any brewer's books and of his premises and otherwise check the accuracy of any such return or to check the alcoholic content of beer manufactured by him.

History: En. Sec. 7, Ch. 106, L. 1933; re-en. Sec. 2815.16, R.C.M. 1935; Sec. 4-311, R.C.M. 1947; amd. and redes. 4-3-203 by Sec. 51, Ch. 387, L. 1975; R.C.M. 1947, 4-3-203.

16-3-212. Brewers' sales to wholesalers lawful. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler.

History: En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.18, R.C.M. 1935; Sec. 4-313, R.C.M. 1947; amd. and redes. 4-3-204 by Sec. 52, Ch. 387, L. 1975; R.C.M. 1947, 4-3-204.

16-3-213. Brewers not to retail beer — original package exception. It shall be unlawful for any brewer or breweries to have or own any permit to sell or retail beer at any place or premises, it being the declared intention to prohibit brewers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer manufactured by them, in original packages, at either wholesale or retail.

History: En. Sec. 11, Ch. 106, L. 1933; re-en. Sec. 2815.20, R.C.M. 1935; Sec. 4-315, R.C.M. 1947; redes. 4-3-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-205.

16-3-214. Beer sales by brewers. Subject to the limitations and restrictions contained in this code, any brewer duly licensed as such by the United States of America who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, shall be licensed by the department, in accordance with the provisions of this code and such rules as may be prescribed by the department, to:

(1) sell and deliver beer to:

(a) a vendor;

(b) any licensees who are entitled to purchase beer from a brewer under this code; or

(c) the public; or

(2) do any one or more of such acts of sale and delivery of beer.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.22, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, 4-3-206.

16-3-215 through 16-3-220 reserved.

16-3-221. Illegal acts by brewers. It is unlawful for any brewer or any officer, agent, or representative of any brewer to:

(1) coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into to sell beer manufactured by the brewer. A brewer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer cancels or terminates a wholesaler's franchise, the brewer has the burden of proving the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 shall be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207.

16-3-222. Mandatory provisions of brewer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler shall specifically set forth or contain the following:

(1) that the brewer or any officer, agent, or representative of any brewer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer and may not be changed without the mutual consent of both the wholesaler and brewer.

(2) the agreed-upon brands of the brewer to be sold by the wholesaler;

(3) that the brewer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, and that a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208.

16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer in writing is required for such transferee to continue as a wholesaler of said brewer, which consent shall consider the personal, financial, and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, L. 1974; Sec. 4-317.4, R.C.M. 1947; redes. 4-3-209 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-209.

16-3-224. Contractual or franchise relationship — existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer within the contemplation of 16-3-221 through 16-3-226:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer or its agent for any beer to a licensed wholesaler within this state;

(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974; Sec. 4-317.5, R.C.M. 1947; redes. 4-3-210 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-210.

16-3-225. Injunction to prevent franchise cancellation. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

History: En. 4-317.6 by Sec. 5, Ch. 322, L. 1974; Sec. 4-317.6, R.C.M. 1947; redes. 4-3-211 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-211.

Cross-References

Injunctions, Title 27, ch. 19.

16-3-226. Brewer-wholesaler agreements filed with department. An exact copy of all agreements, contracts, or franchises between a brewer and a wholesaler shall be filed with the department as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements, or franchises not upon record with the department shall not be considered by any court as having any force or effect.

History: En. 4-317.7 by Sec. 6, Ch. 322, L. 1974; Sec. 4-317.7, R.C.M. 1947; amd. and redes. 4-3-212 by Sec. 55, Ch. 387, L. 1975; R.C.M. 1947, 4-3-212.

16-3-227 through 16-3-229 reserved.

16-3-230. Out-of-state beer required to be shipped to wholesaler. All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and by him unloaded into his warehouse in Montana or subwarehouse in Montana. A brewer may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold, which records may at all times be inspected by any representative of the department. Said wholesaler shall distribute said beer from such warehouse or subwarehouse and shall keep records at his principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. Said records may at all times be inspected by any member or representative of the department.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 2, Ch. 178, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, inserted requirement that beer be consigned and shipped "either directly or via a licensed storage depot"; and inserted second sentence.

16-3-231. Monthly report of wholesaler. Every wholesaler licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured in this state sold and delivered by him and also of the amount of beer manufactured in places outside of the state sold and delivered by him during the previous month and of his inventory. The department shall have the right at any time to make an examination of the wholesaler's books and of his premises and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand.

History: En. Sec. 15, Ch. 106, L. 1933; re-en. Sec. 2815.24, R.C.M. 1935; Sec. 4-319, R.C.M. 1947; amd. and redes. 4-3-213 by Sec. 57, Ch. 387, L. 1975; R.C.M. 1947, 4-3-213.

16-3-232. Beer sales by wholesaler. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, or to a common carrier, holding and having a license under this code.

History: En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.26, R.C.M. 1935; Sec. 4-321, R.C.M. 1947; amd. and redes. 4-3-214 by Sec. 59, Ch. 387, L. 1975; R.C.M. 1947, 4-3-214.

16-3-233. Sales to public by wholesaler unlawful. It shall be unlawful for any wholesaler to give, sell, deliver, or distribute any beer purchased or acquired by him to the public.

History: En. Sec. 18, Ch. 106, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.27, R.C.M. 1935; amd. Sec. 1, Ch. 274, L. 1973; Sec. 4-322, R.C.M. 1947; redes. 4-3-215 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-215.

16-3-234. Consumption of beer on wholesalers' premises unlawful. It shall be unlawful for any wholesaler to sell, serve, or give away any beer to be consumed on such wholesaler's premises.

History: En. Sec. 19, Ch. 106, L. 1933; re-en. Sec. 2815.28, R.C.M 1935; Sec. 4-323, R.C.M. 1947; redes. 4-3-216 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-216.

16-3-235. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the 15th day of each month, make an exact return to the department of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered.

History: En. Sec. 4, Ch. 220, L. 1939; Sec. 4-326, R.C.M. 1947; amd. and redes. 4-3-218 by Sec. 61, Ch. 387, L. 1975; R.C.M. 1947, 4-3-218.

16-3-236 through 16-3-240 reserved.

16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers and wholesalers unlawful — exceptions. It shall be unlawful for any brewer or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting, or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give, or loan to a retail licensee:

(1) bottle openers, can openers, and trays, with or without advertising matter thereon;

(2) advertising matter or novelties, of a value of not to exceed $50 per brewery in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(3) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(4) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.51, R.C.M. 1935; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967; Sec. 4-349, R.C.M. 1947; amd. and redes. 4-3-219 by Sec. 74, Ch. 387, L. 1975; R.C.M. 1947, 4-3-219; amd. Sec. 1, Ch. 568, L. 1981.

Compiler's Comments

1981 Amendment: Increased the value of advertising matter or novelties that a brewer or wholesaler is allowed to furnish from $15 per year to $50 per brewery per year in (2).

16-3-242. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if:

(1) such brewer or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or his premises;

(2) such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other;

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

History: En. 4-3-220 by Sec. 75, Ch. 387, L. 1975; R.C.M. 1947, 4-3-220.

16-3-243. Seven-day credit limitation. No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of brewers, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

History: En. 4-3-221 by Sec. 76, Ch. 387, L. 1975; R.C.M. 1947, 4-3-221.

16-3-244. Beer advertising limitations. It shall be lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers contained in 16-3-241 of this code and subject to the following restrictions on retailers. No retail licensee shall display or permit to be displayed on the exterior portion or surface of such retailer's place of business or on the exterior portion or surface of any building of which said place of business is a part or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, wholesaler, or place of manufacture of any beer whatsoever.

History: En. Sec. 11, Ch. 166, L. 1951; Sec. 4-358, R.C.M. 1947; amd. and redes. 4-3-222 by Sec. 77, Ch. 387, L. 1975; R.C.M. 1947, 4-3-222.

Part 3

Retail Sales Restrictions

16-3-301. Unlawful purchases, sales, or deliveries. (1) It shall be unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It shall be unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 19 years of age;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(3) Any person under 19 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in 45-5-624; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(4) It shall be further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 19 years of age.

History: (1), (2)En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.33, R.C.M. 1935; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 94, L. 1973; Sec. 4-330, R.C.M. 1947; amd. and redes. 4-3-301 by Sec. 64, Ch. 387, L. 1975; Sec. 4-3-301, R.C.M. 1947; (3)En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971; amd. Sec. 5, Ch. 94, L. 1973; Sec. 4-413, R.C.M. 1947; amd. and redes. 4-3-306 by Sec. 91, Ch. 387, L. 1975; Sec. 4-3-306, R.C.M. 1947; (4)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-3-301, 4-3-306, 4-6-404(part); amd. Sec. 1, Ch. 186, L. 1979.

Cross-References

Liability for willful acts and negligence, 27-1-701.

Criminal offense — selling or giving alcoholic beverages to minors, 45-5-623.

16-3-302. Sale of beer by retailer for consumption on premises. It shall be lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of such retailer.

History: En. Sec. 29, Ch. 106, L. 1933; re-en. Sec. 2815.31, R.C.M. 1935; Sec. 4-328, R.C.M. 1947; amd. and redes. 4-3-302 by Sec. 63, Ch. 387, L. 1975; R.C.M. 1947, 4-3-302.

16-3-303. Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.32, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1961; Sec. 4-329, R.C.M. 1947; redes. 4-3-303 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-303.

16-3-304. Closing hours for licensed retail establishments. All licensed establishments wherein alcoholic beverages are sold, offered for sale, or given away at retail shall be closed each day between 2 a.m. and 8 a.m.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in 16-3-305.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973; Sec. 4-303, R.C.M. 1947; amd. and redes. 4-3-304 by Sec. 46, Ch. 387, L. 1975; R.C.M. 1947, 4-3-304.

16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed. During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, or give away any such alcoholic beverages, and during such hours all persons, save employees of such licensed establishments, shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold.

History: En. Sec. 3, Ch. 161, L. 1943; Sec. 4-304, R.C.M. 1947; amd. and redes. 4-3-305 by Sec. 47, Ch. 387, L. 1975; R.C.M. 1947, 4-3-305.

16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew a license for any establishment located in violation of this section if the licensee does not relocate his entrances any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309.

History: En. Sec. 13, Ch. 84, L. 1937; Sec. 4-415, R.C.M. 1947; amd. and redes. 4-4-107 by Sec. 92, Ch. 387, L. 1975; R.C.M. 1947, 4-4-107; amd. Sec. 1, Ch. 152, L. 1981; amd. Sec. 1, Ch. 662, L. 1983.

Compiler's Comments

1983 Amendment: In (1) substituted reference to subsections (2) through (4) for reference to subsections (2) and (3); and inserted (4).

1981 Amendment: Substituted "(1) Except as provided in subsections (2) and (3), no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet" for "A retail licensee may not extend or relocate his premises within 600 feet" at the beginning of the section; inserted the subsection (2) designations; inserted "the licensee does not relocate his entrances any closer than the existing entrances and if" in the introductory phrase of (2); added subsection (3); and made minor changes in phraseology.

16-3-307. Sale of liquor at less than posted price unlawful. It shall be unlawful for any licensee under the provisions of this code to resell any liquor purchased by such licensee from a state liquor store or the state of Montana for a sum less than the posted price established by the store and paid by the licensee therefor.

History: En. Sec. 19, Ch. 84, L. 1937; Sec. 4-421, R.C.M. 1947; amd. and redes. 4-3-307 by Sec. 98, Ch. 387, L. 1975; R.C.M. 1947, 4-3-307.

16-3-308. Refilling of liquor bottles prohibited. (1) No person, or the agent or employee of such person, who sells or offers liquor for sale may:

(a) place in any liquor bottle any liquor whatsoever other than that contained in such bottle at the time of stamping by the federal government;

(b) possess any liquor bottle in which any liquor has been placed in violation of subsection (1)(a);

(c) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(d) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (1)(c).

(2) This section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

History: En. 4-3-308 by Sec. 117, Ch. 387, L. 1975; R.C.M. 1947, 4-3-308.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

16-3-309. Sales prohibited by ordinance. (1) An incorporated city may enact an ordinance defining certain areas in its incorporated limits where alcoholic beverages may or may not be sold.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where alcoholic beverages may or may not be sold.

(3) In enacting such an ordinance or resolution, the county or city may provide that the provisions of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has supplanted the provisions of 16-3-306(1), upon request of the department the governing body of the county or city must certify to the department whether or not the person or individual identified in the request may lawfully sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the determination set forth in the certification.

(4) No county or incorporated city may by ordinance restrict the number of licenses that the department may issue.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(part); amd. Sec. 2, Ch. 662, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing section for "(1) The cities and incorporated towns may enact ordinances defining certain areas in the cities and towns where alcoholic beverages may or may not be sold.

(2) No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue."

16-3-310. Lapse of license for nonuse. Any retail license issued pursuant to this code (including any retail license to sell beer for off-premises consumption) not actually used in a going establishment for 90 days shall automatically lapse. Upon determining the fact of nonuse for such period, the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or like business, provided such licensee has secured written authority from the department to close and has licensed premises for a specified period of greater than 90 days' duration. Should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision shall not apply.

History: En. 4-4-203 by Sec. 80, Ch. 387, L. 1975; R.C.M. 1947, 4-4-203.

Part 4

Sale of Table Wine

16-3-401. Public policy. The public policy of the state of Montana is to maintain a system for the importation and sale of wine by the state through state liquor facilities and provide for, regulate, and control the acquisition, importation, and distribution of table wine containing not more than 14% alcohol by volume by licensed wine distributors and the state.

History: En. Sec. 1, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 699, L. 1979.

16-3-402. Importation of wine — records. (1) With the exception of table wine purchased by the department and shipped to its warehouse, all table wine manufactured outside of Montana and shipped into Montana shall be consigned to and shipped to a licensed table wine distributor, and by him unloaded into his warehouse in Montana or subwarehouse in Montana. The distributor shall distribute said table wine from such warehouse or subwarehouse.

(2) The distributor shall keep records at his principal place of business of all table wine including the name or kind received, on hand, sold and distributed. The records may at all times be inspected by any member or representative of the department of revenue.

(3) Any table wine which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed table wine distributor or the department shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 4, I.M. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979.

Cross-References

Search, seizure, and forfeiture of liquor, 16-6-102 through 16-6-107.

16-3-403. To whom table wine distributor may sell. A table wine distributor may sell and deliver table wine purchased or acquired by him to another table wine distributor, retailer, or common carrier which holds a license issued by the department of revenue, or to the department. It shall be unlawful for any table wine distributor to sell, deliver, or give away any table wine to be consumed on such distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by him to the public.

History: En. Sec. 5, I.M. 81, app. Nov. 7, 1978; amd. Sec. 4, Ch. 699, L. 1979.

16-3-404. Monthly report of table wine distributor. Every licensed table wine distributor shall, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of table wine purchased or acquired by him during the previous month, the amount of table wine sold and delivered by him during the previous month, and the amount of inventory on hand in the manner and form as shall be prescribed by the department. The department shall have the right at any time to make an examination of the table wine distributor's books and of his premises and otherwise check the accuracy of such return or check the alcoholic content of table wine which he may have on hand.

History: En. Sec. 6, I.M. 81, app. Nov. 7, 1978.

16-3-405. Carriers' reports of table wine transported. Every railroad, motor carrier, and airline transporting table wine manufactured out of this state from points outside this state and delivering to points within this state shall, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of such table wine so transported and delivered by such railroad, motor carrier, or airline during the previous month, and shall state in such return the name and address of the consignor and consignee, the date of delivery, and the amount delivered.

History: En. Sec. 7, I.M. No. 81, app. Nov. 7, 1978.

16-3-406. Financial interest in retailers prohibited. (1) No winery or table wine distributor shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, any license or tax which may be required to be paid by any retailer, and no winery or table wine distributor shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

(2) A winery or table wine distributor shall be deemed to have such a financial interest if:

(a) such winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or his premises; or

(b) such winery or table wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or

(c) such table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

History: **En. Sec. 8, I.M. No. 81, app. Nov. 7, 1978.**

CHAPTER 4

LICENSE ADMINISTRATION

Part 1 — Beer and Wine Licenses

Section

16-4-101. Applications for sale or manufacture of beer — qualifications of applicant.
16-4-102. Right of brewers to maintain and operate storage depots — annual licenses.
16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse.
16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department.
16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption.
16-4-106. Beer license transfers.
16-4-107. Winery and importer registration.
16-4-108. Wine distributor's license.
16-4-109. Publicly owned golf course beer and wine license.

Part 2 — All-Beverages Licenses

16-4-201. All-beverages license quota.
16-4-202. Resort licenses.
16-4-203. Determination of public convenience and necessity.
16-4-204. Transfer — catering endorsement.
16-4-205. Limit one license to person — business in name of licensee.
16-4-206. Renumbered 16-4-402(1) and (3) by Code Commissioner, 1979.
16-4-207. Notice of application — publication — protest.
16-4-208. Airport all-beverages license.

Part 3 — Special Licenses

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.
16-4-302. Passenger carrier licenses.

Part 4 — Licensing Criteria

16-4-401. License as privilege — criteria for decision on application.
16-4-402. Application — investigation.
16-4-403. Fingerprints required of licensees and mortgagees.
16-4-404. Protest period — contents of license — posting — privilege — transfer — expiration.
16-4-405. Denial of license.
16-4-406. Renewal — suspension or revocation — penalty.
16-4-407. Expiration of licenses.
16-4-408. Renewal of suspended licenses.
16-4-409. Repealed.
16-4-410. Repealed.
16-4-411. Appeals concerning liquor and beer laws.

Part 5 — Licensing Fees

16-4-501. License and permit fees.
16-4-502. Census.
16-4-503. City and county licenses — fees.

Chapter Cross-References
Discrimination in licensing, 49-3-204.

Part 1

Beer and Wine Licenses

16-4-101. Applications for sale or manufacture of beer — qualifications of applicant. (1) Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply to the department for a permit to do so and pay with such application the license fee prescribed. The department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person.

(2) Upon being satisfied, from such application or otherwise, that such applicant is qualified, the department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant.

(3) If the department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 6, Ch. 106, L. 1933; re-en. Sec. 2815.15, R.C.M. 1935; Sec. 4-310, R.C.M. 1947; amd. and redes. 4-4-101 by Sec. 50, Ch. 387, L. 1975; R.C.M. 1947, 4-4-101.

16-4-102. Right of brewers to maintain and operate storage depots — annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer, upon the payment to the department of an annual license fee in addition to all other fees and taxes required to be paid by such brewer for each storage depot, to own, lease, maintain, and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code.

History: En. Sec. 6, Ch. 166, L. 1951; Sec. 4-317.1, R.C.M. 1947; amd. and redes. 4-4-102 by Sec. 54, Ch. 387, L. 1975; R.C.M. 1947, 4-4-102; amd. Sec. 3, Ch. 178, L. 1983.

Compiler's Comments
1983 Amendment: After "to manufacture beer" deleted "in the state of Montana".

16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse. (1) Any person desiring to sell and distribute beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee provided for, and the department is hereby empowered, authorized, and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code. Such license shall be at all times prominently displayed in the place of business of such wholesaler.

(2) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee. The duplicate license shall at all times be prominently displayed at said subwarehouse.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 1, Ch. 359, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "To qualify for a wholesaler's license, the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership. If applicant is a foreign corporation, said corporation shall be authorized to do business in Montana." from the beginning of (2); added subsection (3); and made minor changes in phraseology.

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

Cross-References

Foreign corporation certificate of authority to do business in Montana, 35-1-1001.

16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department. (1) Any person desiring to possess and have beer for sale under the provisions of this code for the purpose of selling it at retail shall first apply to the department for a permit to do so and tender with such application the license fee provided for.

(2) Upon being satisfied, from such application or otherwise, that the applicant is qualified as provided, the department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant.

(3) If the department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be returned by the department.

(4) The department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such

retailer and of his premises and otherwise check his methods of conducting business and the alcoholic content of the beer kept by him for sale.

(5) A person may not sell beer at retail without a valid license issued under this code.

History: En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.30, R.C.M. 1935; Sec. 4-327, R.C.M. 1947; amd. and redes. 4-4-104 by Sec. 62, Ch. 387, L. 1975; R.C.M. 1947, 4-4-104.

16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one retail beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction thereof, and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(1), (3), (4); amd. Sec. 12, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 25, L. 1981; amd. Sec. 1, Ch. 86, L. 1981; amd. Sec. 2, Ch. 519, L. 1981; amd. Sec. 1, Ch. 50, L. 1983; amd. Sec. 2, Ch. 595, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 50, in (1)(a)(ii), inserted "retail" before "beer license"; in (1)(a)(iii), inserted "four retail beer licenses for the first 2,000 inhabitants" after "corporate limits of such cities" and substituted "next" for "first" before "2,000 inhabitants or major fraction thereof".

Chapter 595, in (1)(b), after "shall be measured" substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 25 substituted "prescribed in 16-4-502" for "as shown by the most recent official United States census authorized by congress" in (1)(a).

Chapter 86 substituted "on or off the premises" for "on the premises" near the end of (2).

Chapter 519 changed the method of measuring the 5-mile limitation in the last sentence of (1)(b) from a straight line to the shortest public road or highway.

16-4-106. Beer license transfers. A transfer of any brewer's, beer wholesaler's, table wine distributor's, beer retailer's, or table wine retailer's license may be made on application to the department with the consent of the department, provided that the transferee qualifies under this code.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; R.C.M. 1947, 4-4-401(1)(b); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978.

16-4-107. Winery and importer registration. Any winery or importer of table wines which holds the appropriate license from the United States of America and which desires to distribute its table wines within this state shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery will furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require such winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine it ships into the state, names and addresses of consignees, and such other information as the department may determine to be necessary to assure that importation and distribution of table wines within this state conform to the requirements of this title. No winery or importer of table wines shall ship table wines into this state until such registration is granted by the department; and such registration may be cancelled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration.

History: En. Sec. 3, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 70, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In the third sentence, inserted "that" before "importation" and substituted "this title" for "[this act]".

16-4-108. Wine distributor's license. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of $400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 at midnight of such year.

(3) No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license shall be at all times prominently displayed in the place of business of such table wine distributor.

(5) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license shall at all times be prominently displayed at said

subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

History: En. Sec. 4, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979; amd. Sec. 2, Ch. 359, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "shall" before "expire" in (2); deleted "To qualify for a table wine distributor's license the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a table wine distributor may, upon incorporation in accordance with the laws of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall be authorized to do business in Montana; and said" and inserted "An" at the beginning of (5); added subsection (6); and made minor changes in phraseology.

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

Cross-References

Foreign corporation certificate of authority to do business in Montana, 35-1-1001.

16-4-109. Publicly owned golf course beer and wine license. (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as a publicly owned golf course beer and wine license, for use at a publicly owned golf course.

(2) The application must be made by the local government owning and operating the public golf course. The local government may lease the license for use at the golf course to an individual or entity approved by the department.

(3) A publicly owned golf course beer and wine license and all retail beer and wine sales thereunder are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(4) The department of revenue shall issue a publicly owned golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.

History: En. Sec. 1, Ch. 537, L. 1983.

Part 2

All-Beverages Licenses

16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971; amd. Sec. 1, Ch. 340, L. 1974; Sec. 4-403, R.C.M. 1947; amd. and redes. 4-4-202 by Sec. 79, Ch. 387, L. 1975; amd. Sec. 6, Ch. 496, L. 1977; R.C.M. 1947, 4-4-202; amd. Sec. 2, Ch. 25, L. 1981; amd. Sec. 3, Ch. 519, L. 1981; amd. Sec. 3, Ch. 595, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (2), after "shall be measured" substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 25 substituted "prescribed in 16-4-502" for "as shown by the most recent official United States census authorized by congress" in (1); deleted language concerning including population within 5 miles of city when that population exceeded city population in (2).

Chapter 519 changed the method of measuring the 5-mile limitation in the last sentence of (2) from a straight line to the shortest public road or highway.

16-4-202. Resort licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in [this act], the department may issue resort retail liquor licenses in a resort area.

(2) For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

(3) The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules to be first promulgated on or before December 31, 1975.

(4) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of resort retail liquor license, must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5) of this section. The word control shall mean lands held under lease, option, or permit.

(5) The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries, designating the ownership of the lands within the resort area, which plat must be verified by the resort developer or landowner and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings and other improvements to be built in said area in which resort retail liquor licenses are to or may be located. A master plan for the development of the area may be filed by the resort developer in satisfaction of this section.

(6) Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules of the department. At least 30 days prior to the date of the hearing, the department shall publish notice thereof, with a description of the location of the proposed resort area, in a newspaper published in the county or counties in which the resort is located, once a week for 4 consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication.

(7) Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat.

(8) Within 30 days of the hearing, the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted, and the decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the resort area.

(b) Each applicant must submit plans showing the location, appearance, and floor plan of the premises for which application for a license is made.

(c) If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction or are otherwise incomplete at the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail liquor license shall not be subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207.

History: En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; R.C.M. 1947, 4-4-204(part); amd. Sec. 2, Ch. 583, L. 1979.

Cross-References

Contested cases and the Montana Administrative Procedure Act, 2-4-102, Title 2, ch. 4, parts 6 and 7.

16-4-203. Determination of public convenience and necessity. Any original license issued pursuant to 16-4-201 or 16-4-202 subsequent to April 30, 1974, shall be issued only upon the department having first determined, upon a hearing held pursuant to the Montana Administrative Procedure Act, that the issuance of such license is justified by public convenience and necessity.

History: En. 4-403.1 by Sec. 2, Ch. 340, L. 1974; Sec. 4-403.1, R.C.M. 1947; redes. 4-4-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-4-205.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(2) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (2) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

History: (4)(a), (b) of 4-4-206 En. Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(4)(a)(b)(part); amd. Sec. 1, Ch. 139, L. 1979; amd. Sec. 3, Ch. 25, L. 1981; amd. Sec. 1, Ch. 59, L. 1981; amd. Sec. 1, Ch. 512, L. 1981; amd. Sec. 1, Ch. 29, L. 1983; amd. Sec. 1, Ch. 37, L. 1983; amd. Sec. 1, Ch. 59, L. 1983; amd. Sec. 1, Ch. 636, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 29 deleted former (9) that read: "All licenses shall expire at midnight of June 30 of each year."

Chapter 37, in (2)(c), reduced the fee from $40 to $35 and reduced the time for filing the application from 10 days to 3 days prior to the event; at end of (2)(d) inserted the requirement of approval by the local law enforcement agency.

Chapter 59, in (1)(c), deleted last two sentences, which read: "A license transferred between quota areas under this section may be held only by natural persons for 5 years following the transfer. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license."

Chapter 636, in (1)(a)(ii), deleted "by more than 33%" after "that area's quota" and inserted (A) and (B).

1983 Code Commissioner Change: Former (1) through (5) and (8) were redesignated 16-4-404(2) through (7). The 1981 amendment note has been modified to reflect the outline change.

1981 Amendments — Composite: Chapter 25 added "prescribed in 16-4-502" at the end of (1)(a)(i) and (1)(a)(ii).

Chapter 59 inserted subsection (1)(b) and inserted "Except as provided in subsection (1)(b)" at the beginning of (1)(a).

Chapter 512 changed 25% to 33% in (1)(a)(ii); changed the provisions of (1)(b) to apply only for the 5 years following the transfer; and added subsection (1)(d).

In preparing the composite of the Ch. 59 and Ch. 512 amendments, the code commissioner did not include the language "Except as provided in subsection (b) above," added to (1)(c) by Ch. 59 in order to avoid apparently redundant language indicating the subsection to which (1)(c) applies.

16-4-205. Limit one license to person — business in name of licensee. No person shall be granted more than one all-beverages license in any year. No business may be carried on under any license issued under this chapter except in the name of the licensee.

History: En. Sec. 9, Ch. 84, L. 1937; Sec. 4-411, R.C.M. 1947; amd. and redes. 4-4-207 by Sec. 89, Ch. 387, L. 1975; R.C.M. 1947, 4-4-207.

16-4-206. Renumbered 16-4-402(1) and (3) by Code Commissioner, 1979.

16-4-207. Notice of application — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer such license, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license shall be published once a week for 4 consecutive weeks. Notice of application for transfer of a license shall be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is hereby given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold), and protests, if any there be, against the issuance of such license may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 19...

Dated .... Signed ......
ADMINISTRATOR

(2) Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests against the issuance or transfer of the license are received, the department shall hold a public hearing at its office in Helena.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); amd. Sec. 1, Ch. 583, L. 1979; amd. Sec. 1, Ch. 445, L. 1983.

Compiler's Comments

1983 Amendment: In (3), after "receives no" inserted "written"; near beginning of second sentence of (3) after "If" deleted ", however, any" and inserted "written"; after "against the" substituted "issuance" for "issue"; and after "hold a" inserted "public".

16-4-208. Airport all-beverages license. (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity, including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application shall be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to an individual or entity approved by the department.

(3) A public airport all-beverages license and all retail liquor sales thereunder shall be subject to all statutes and rules governing all-beverages licenses.

(4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued within the all-beverages license quota area in which the airport is situated.

History: En. Sec. 1, Ch. 461, L. 1979.

Part 3

Special Licenses

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer and table wine to the patrons of such event to be consumed within the enclosure wherein the event is held.

(b) The application of any such association or corporation shall be presented 3 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in the application and for 1 day thereafter.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 16-4-207, be entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at such post or lodge to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued shall be for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.35, R.C.M. 1935; amd. Sec. 1, Ch. 235, L. 1963; amd. Sec. 1, Ch. 285, L. 1974; Sec. 4-332, R.C.M. 1947; amd. and redes. 4-4-105 by Sec. 65, Ch. 387, L. 1975; amd. Sec. 4, Ch. 496, L. 1977; R.C.M. 1947, 4-4-105; amd. Sec. 1, Ch. 401, L. 1981; amd. Sec. 2, Ch. 37, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(b), reduced the time for filing the application from 10 days to 3 days prior to the event; and added the approval requirement at the end of (1)(b).

1981 Amendment: Changed "or wine" to "and table wine" after "beer" throughout the section.

16-4-302. Passenger carrier licenses. Common carriers serving Montana may serve beer and liquor to passengers in aircraft over or railroad cars in the state of Montana upon the issuance of a retail beer and liquor license by the department for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor and shall be effective from July 1 of the current year to July 1 of the following year.

History: En. 4-4-109 by Sec. 114, Ch. 387, L. 1975; R.C.M. 1947, 4-4-109(part).

Part 4

Licensing Criteria

16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant is a resident of the state and is qualified to vote in a state election;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana.

(4) In the case of a license that permits the manufacture or wholesaling of an alcoholic beverage, the department must find in every case in which it

makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iii) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments;

(iv) the applicant is not under the age of 19 years; and

(v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(ii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana.

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

History: En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957; Sec. 4-412, R.C.M. 1947; amd. and redes. 4-4-108 by Sec. 90, Ch. 387, L. 1975; R.C.M. 1947, 4-4-108; amd. Sec. 2, Ch. 186, L. 1979; amd. Sec. 3, Ch. 359, L. 1981; amd. Sec. 1, Ch. 178, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(a)(i) and (3)(a)(i), substituted "the applicant will not possess an ownership interest in more than one establishment" for "neither the applicant nor any member of his immediate family has an ownership interest in any other establishment"; near beginning of (3), after "off-premises consumption" deleted "or that is for the manufacture or wholesaling of an alcoholic beverage"; inserted (4); in (5), inserted "and (4)(b)"; and made minor changes in phraseology.

1981 Amendment: Inserted "Except as provided in subsection (5) (now (6)), in the case of a license that permits on-premises consumption" at the beginning of (2); inserted (2)(a) (introductory clause), (2)(b), (3), (4) (now (5)), and (5) (now (6)).

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

Cross-References

Corporate authorization to do business in Montana, 35-1-203, 35-1-1001.

16-4-402. Application — investigation. (1) Prior to the issuance of any license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as may be required by the department. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths.

(2) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall within 30 days make a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business and whether the requirements of this code and the rules promulgated by the department are met and complied with. This subsection does not apply to a catering endorsement provided in 16-4-204(7) or a special permit provided in 16-4-301.

(3) Upon proof that any applicant made a false statement in any part of the application, the application for the license may be denied, and if issued, the license may be revoked.

History: (1), (3)En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939; amd. Sec. 2, Ch. 163, L. 1941; Sec. 4-407, R.C.M. 1947; amd. and redes. 4-4-301 by Sec. 83, Ch. 387, L. 1975; amd. Sec. 7, Ch. 496, L. 1977; Sec. 4-4-301, R.C.M. 1947; Sec. 16-4-206, MCA 1979; (2)En. Sec. 6, Ch. 84, L. 1937; Sec. 4-408, R.C.M. 1947; amd. and redes. 4-4-303 by Sec. 85, Ch. 387, L. 1975; amd. Sec. 9, Ch. 496, L. 1977; Sec. 4-4-303, R.C.M. 1947; redes. 16-4-402(1) and (3) by Code Commissioner, 1979; amd. Sec. 1, Ch. 18, L. 1979; amd. Sec. 3, Ch. 37, L. 1983; amd. Sec. 1, Ch. 51, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 37 inserted last sentence of (2).

Chapter 51, in (2), after "accompanied by the necessary license fee" inserted "or letter of credit as provided in 16-4-501(7)(f)".

16-4-403. Fingerprints required of licensees and mortgagees. All applicants for a Montana retail all-beverages or beer license, including corporate officers and managers, may be required by the department when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license. This provision shall also apply to all who file a security interest against such license except as to banks, savings and loan institutions, and licensed lending agencies.

History: Ap. p. Sec. 1, Ch. 487, L. 1973; Sec. 4-408.1, R.C.M. 1947; amd. and redes. 4-4-304 by Sec. 86, Ch. 387, L. 1975; Sec. 4-4-304, R.C.M. 1947; Ap. p. Sec. 2, Ch. 487, L. 1973; Sec. 4-408.2, R.C.M. 1947; redes. 4-4-305 by Sec. 120, Ch. 387, L. 1975; Sec. 4-4-305, R.C.M. 1947; R.C.M. 1947, 4-4-304, 4-4-305.

16-4-404. Protest period — contents of license — posting — privilege — transfer — expiration. (1) No license may be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(3) Any license issued under the provisions of this code shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(5) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

History: (1)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); (2) thru (7) En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951; Sec. 4-410, R.C.M. 1947; amd. and redes. 4-4-206 by Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(part); redes. from 16-4-204(1)-(5), (8) by Code Commissioner, 1983.

16-4-405. Denial of license. (1) The department may deny the issuance of a retail beer or all-beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) No retail license may be issued by the department for any premises situated within any zone of such city or town where the sale of beer or liquor

is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) Nor may a license under this code be issued if the department finds from the evidence at the hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this code will not be carried out by the issuance of such license.

History: (1), (2)En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; Sec. 4-4-201, R.C.M. 1947; (3)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; Sec. 4-4-302, R.C.M. 1947; R.C.M. 1947, 4-4-201(part), 4-4-302(part).

Cross-References

Nuisances and their abatement, Title 27, ch. 30.

16-4-406. Renewal — suspension or revocation — penalty. The department may upon its own motion and shall upon a written, verified complaint of any person investigate the action and operation of any brewer, wholesaler, or retailer licensed under this code. If the department, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this code or any rules of the department, it may, in its discretion and in addition to the other penalties prescribed, reprimand a licensee, proceed to revoke the license of any such licensee or it may suspend the same for a period of not to exceed 3 months or it may refuse to grant a renewal of said license upon the expiration thereof or impose a civil penalty not to exceed $1,500, subject to the opportunity for a hearing under the Montana Administrative Procedure Act.

History: En. Sec. 46, Ch. 106, L. 1933; re-en. Sec. 2815.45, R.C.M. 1935; amd. Sec. 8, Ch. 166, L. 1951; Sec. 4-342, R.C.M. 1947; amd. and redes. 4-4-402 by Sec. 69, Ch. 387, L. 1975; R.C.M. 1947, 4-4-402.

Cross-References

Hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

16-4-407. Expiration of licenses. Each July 1, the department shall issue licenses to brewers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis and at such fees as are prescribed by law, and such licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.

History: En. Sec. 2, Ch. 235, L. 1943; Sec. 4-406, R.C.M. 1947; amd. and redes. 4-4-404 by Sec. 82, Ch. 387, L. 1975; amd. Sec. 12, Ch. 496, L. 1977; R.C.M. 1947, 4-4-404; amd. Sec. 2, Ch. 29, L. 1983.

Compiler's Comments

1983 Amendment: Before "midnight", substituted "are subject to suspension or revocation under 16-4-406 after" for "shall expire at"; and inserted the "if" clause at the end of the first sentence.

16-4-408. Renewal of suspended licenses. After suspension or revocation of a license, the department shall have the power to renew the same if in its discretion a proper showing therefor has been made.

History: En. Sec. 27, Ch. 84, L. 1937; Sec. 4-429, R.C.M. 1947; amd. and redes. 4-4-405 by Sec. 102, Ch. 387, L. 1975; R.C.M. 1947, 4-4-405.

16-4-409. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 5, Ch. 519, L. 1981.

16-4-410. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 6, Ch. 519, L. 1981.

16-4-411. Appeals concerning liquor and beer laws. Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or revocation of beer or liquor licenses to the state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act, and the decision of the state tax appeal board shall be final unless reversed or modified upon judicial review.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973; R.C.M. 1947, 82A-1808.

Cross-References

Independent tax appeal procedures to be provided, Art. VIII, sec. 7, Mont. Const.

Contested cases and the Montana Administrative Procedure Act, Title 2, ch. 4, parts 6 and 7.

State Tax Appeal Board, Title 15, ch. 2.

Part 5

Licensing Fees

16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(10) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓ % of any license fee delinquent on July 1 of the renewal year, 66 ⅔ % of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

History: (1) thru (5), (9)En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en, Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; Sec. 4-4-401, R.C.M. 1947; (6)En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; Sec. 4-4-204, R.C.M. 1947; (7)En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; R.C.M. 1947, 4-404(part), 4-4-204(part), 4-4-401(part); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978; (8)En. Sec. 2, Ch. 461, L. 1979; amd. Sec. 1, Ch. 181, L. 1981; amd. Sec. 2, Ch. 401, L. 1981; amd. Sec. 4, Ch. 519, L. 1981; amd. Sec. 3, Ch. 29, L. 1983; amd. Sec. 2, Ch. 51, L. 1983; amd. Sec. 4, Ch. 595, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 29 inserted (10).

Chapter 51, in (7)(f), inserted the provision providing for an irrevocable letter of credit.

Chapter 595, in subsection (7)(b) through (7)(e), substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 181 inserted the provision for a $250 license in (7)(a), a $350 license in (7)(b), a $500 license in (7)(c), and a $650 license in (7)(d) for a unit of a nationally chartered veterans' organization; and deleted "of $800" after "renewel fee" at the end of (7)(f).

Chapter 401 added "and table wine" after "beer" in (2) and (3).

Chapter 519 changed the method of measuring the 5-mile limitation from a straight line to the shortest public road or highway in subsections (7)(b), (7)(c), (7)(d), and (7)(e).

16-4-502. Census. The census taken under the direction of congress shall be the basis upon which the respective populations of the counties and incorporated cities or towns shall be determined. However, in the interim between censuses, the department shall use as such basis the most recent population estimates published by the bureau of the census, United States department of commerce.

History: En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; amd. and redes. 4-4-403 by Sec. 119, Ch. 387, L. 1975; amd. Sec. 11, Ch. 496, L. 1977; R.C.M. 1947, 4-4-403; amd. Sec. 4, Ch. 25, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "counties and incorporated cities or towns" for "municipalities"; substituted the last sentence for language allowing a published direct enumeration by state or municipality.

16-4-503. City and county licenses — fees. The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer or beer-and-wine license collected by the department from such licensee under this code.

History: En. Sec. 28, Ch. 84, L. 1937; Sec. 4-430, R.C.M. 1947; amd. and redes. 4-4-406 by Sec. 103, Ch. 387, L. 1975; amd. Sec. 1, Ch. 509, L. 1977; R.C.M. 1947, 4-4-406.

CHAPTER 5

IDENTIFICATION CARDS
(Repealed. Sec. 2, Ch. 26, L. 1979.)

Chapter Compiler's Comments

Histories of Repealed Sections:

16-5-101. En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch.

94, L. 1973; Sec. 4-506, R.C.M. 1947; redes. 4-5-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-101.

16-5-102. En. Sec. 2, Ch. 190, L. 1957; Sec. 4-507, R.C.M. 1947; amd. and redes. 4-5-102 by Sec. 106, Ch. 387, L. 1975; R.C.M. 1947, 4-5-102.

16-5-103. En. Sec. 3, Ch. 190, L. 1957; Sec. 4-508, R.C.M. 1947; amd. and redes. 4-5-103 by Sec. 107, Ch. 387, L. 1975; R.C.M. 1947, 4-5-103.

16-5-104. En. Sec. 4, Ch. 190, L. 1957; Sec. 4-509, R.C.M. 1947; amd. and redes. 4-5-104 by Sec. 108, Ch. 387, L. 1975; R.C.M. 1947, 4-5-104.

16-5-105. En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973; Sec. 4-510, R.C.M. 1947; amd. and redes. 4-5-105 by Sec. 109, Ch. 387, L. 1975; amd. Sec. 13, Ch. 496, L. 1977; R.C.M. 1947, 4-5-105.

16-5-106. En. Sec. 7, Ch. 190, L. 1957; Sec. 4-512, R.C.M. 1947; redes. 4-5-106 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-106.

CHAPTER 6

ENFORCEMENT

Part 1 — Investigations

Section
16-6-101. Employment of investigators and prosecuting officers.
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16-6-103. Examination of retailer's premises and carriers' cars and aircraft.
16-6-104. Unlawful alcoholic beverage — seizure — forfeiture.
16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance.
16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.
16-6-107. Disposal of forfeited alcoholic beverages — report.
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16-6-109. Unlawful for carrier to refuse inspection of records.

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16-6-303. Sale of liquor not purchased from state store forbidden — penalty.
16-6-304. Providing alcoholic beverage to intoxicated person prohibited.
16-6-305. Age limit for sale of alcoholic beverages.
16-6-306. Bottle clubs prohibited.
16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited.
16-6-308. Patent medicine prohibition.
16-6-309. Liquor administered to institution inmates.
16-6-310. Officer or agent of corporation deemed party to offense.
16-6-311. Occupant of premises deemed party to offense.
16-6-312. Premises where liquor illegally sold public nuisance.
16-6-313. Injunction actions.
16-6-314. Penalty for violating code — revocation of license.

Part 1

Investigations

16-6-101. Employment of investigators and prosecuting officers. The department may appoint one or more investigators or prosecuting officers who, under its direction, shall perform such duties as it may require and who shall be paid such salaries, fees, and expenses as the department may fix.

History: En. Sec. 90, Ch. 105, L. 1933; re-en. Sec. 2815.150, R.C.M. 1935; Sec. 4-225, R.C.M. 1947; amd. and redes. 4-6-201 by Sec. 39, Ch. 387, L. 1975; R.C.M. 1947, 4-6-201.

16-6-102. Search warrants. Upon information on oath by any investigator appointed under this code or by any peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept or had or kept or had for unlawful purposes in any building or premises, it shall be lawful for any court by warrant to authorize and empower the investigator or peace officer or any other person named therein to enter and search the building or premises and every part thereof and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof or any closet, cupboard, box, or other receptacle therein which might contain alcoholic beverages.

History: En. Sec. 74, Ch. 105, L. 1933; re-en. Sec. 2815.133, R.C.M. 1935; Sec. 4-208, R.C.M. 1947; amd. and redes. 4-6-203 by Sec. 25, Ch. 387, L. 1975; R.C.M. 1947, 4-6-203.

Cross-References

Unreasonable searches and seizures, Art. II, sec. 11, Mont. Const.

Searches and seizures generally, Title 46, ch. 5.

16-6-103. Examination of retailer's premises and carriers' cars and aircraft. The department or any duly authorized representative thereof or the sheriff of any county shall have the right at any time to make an examination of the premises of a retail licensee as to whether the law of Montana and the rules of the department are being complied with and shall also have a right to inspect cars or aircraft of any common carrier system licensed under this code.

History: En. Sec. 26, Ch. 84, L. 1937; Sec. 4-428, R.C.M. 1947; amd. and redes. 4-6-204 by Sec. 101, Ch. 387, L. 1975; R.C.M. 1947, 4-6-204.

16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

(2) Any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: (1)En. 4-6-205 by Sec. 22, Ch. 387, L. 1975; amd. Sec. 15, Ch. 496, L. 1977; Sec. 4-6-205, R.C.M. 1947; (2)En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; Sec. 4-4-103, R.C.M. 1947; R.C.M. 1947, 4-4-103(part), 4-6-205; amd. Sec. 3, Ch. 47, L. 1983.

Compiler's Comments

1983 Amendment: In (1), deleted reference to a violation of 16-3-102.

16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law shall find in any motor vehicle, vessel, boat, canoe, or conveyance of any description an alcoholic beverage which is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of this code, he may forthwith seize the alcoholic beverage and packages in which the same is contained and the motor vehicle, vessel, boat, canoe, or conveyance in which the alcoholic beverage is found. Upon the conviction of the occupant or person in charge of the motor vehicle, vessel, boat, canoe, or conveyance, or of any other person, for having or keeping such alcoholic beverages contrary to any of the provisions of this code in any such vehicle, vessel, boat, canoe, or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part thereof so seized and the package in which the same is contained to be forfeited to the state of Montana. The court may in and by decree further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of Montana.

History: En. Sec. 75, Ch. 105, L. 1933; re-en. Sec. 2815.134, R.C.M. 1935; Sec. 4-209, R.C.M. 1947; amd. and redes. 4-6-207 by Sec. 26, Ch. 387, L. 1975; R.C.M. 1947, 4-6-207.

16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing. (1) Where alcoholic beverage is found by any investigator or peace officer on any premises or in any place in such quantities as to satisfy the investigator or peace officer that such alcoholic beverage is being had or kept contrary to any of the provisions of this code, it shall be lawful for the investigator or peace officer to forthwith seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was had or kept and immediately turn said alcoholic beverage over to the department.

(2) The department shall commence an action in the district court of the county in which the alcoholic beverage is found and seized against said alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the department claims the right to the possession of the alcoholic beverage and shall demand that all persons who claim any right to the possession of the alcoholic beverage shall show the nature of their claim or claims and that the court declare the alcoholic beverage contraband and that the court order the alcoholic beverage be forfeited to the state of Montana.

(4) A summons shall be issued, served, or published as in other civil actions provided by Title 25, except that the summons shall be published in the county where the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this code, proof of the absence of the official seal of the department upon the bottle, jug, package, container, or containers of an alcoholic beverage on which a seal is required shall be prima facie evidence that the alcoholic beverage is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the department. The court shall order all such alcoholic beverage contraband and forfeited to the state of Montana.

History: En. Sec. 76, Ch. 105, L. 1933; re-en. Sec. 2815.135, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1945; Sec. 4-210, R.C.M. 1947; amd. and redes. 4-6-208 by Sec. 27, Ch. 387, L. 1975; R.C.M. 1947, 4-6-208.

16-6-107. Disposal of forfeited alcoholic beverages — report. (1) In every case in which a court makes any order for the forfeiture of alcoholic beverages under any of the provisions of this code and in every case in which any claimant to an alcoholic beverage under the provisions of 16-6-105 fails to establish his claim and right thereto, the alcoholic beverage in question and the packages in which the alcoholic beverage is kept shall forthwith be delivered to the department. The department shall thereupon determine the market value of each forfeited alcoholic beverage which is found to be suitable for sale in the state liquor stores and shall pay the amount so determined to the state treasurer after deducting therefrom the expenses necessarily incurred by the department for transporting the forfeited alcoholic beverage to the state liquor warehouses. The alcoholic beverage suitable for sale shall be taken into stock by the department and sold under the provisions of this code. Each forfeited alcoholic beverage which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the department.

(2) In every case in which an alcoholic beverage is seized by a peace officer, it shall be his duty to forthwith make or cause to be made to the department a report in writing of the particulars of such seizure.

History: En. Sec. 77, Ch. 105, L. 1933; re-en. Sec. 2815.136, R.C.M. 1935; Sec. 4-211, R.C.M. 1947; amd. and redes. 4-6-209 by Sec. 28, Ch. 387, L. 1975; R.C.M. 1947, 4-6-209.

16-6-108. Inspection of carriers' records. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department or any person appointed by it in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

History: En. Sec. 78, Ch. 105, L. 1933; re-en. Sec. 2815.137, R.C.M. 1935; Sec. 4-212, R.C.M. 1947; amd. and redes. 4-6-210 by Sec. 29, Ch. 387, L. 1975; R.C.M. 1947, 4-6-210.

16-6-109. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier and every officer or employee of any such company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in 16-6-108 when requested to do so by the department or by a person so appointed by it shall be guilty of an offense against this code.

History: En. Sec. 79, Ch. 105, L. 1933; re-en. Sec. 2815.138, R.C.M. 1935; Sec. 4-213, R.C.M. 1947; amd. and redes. 4-6-211 by Sec. 30, Ch. 387, L. 1975; R.C.M. 1947, 4-6-211.

Cross-References

Penalty, 16-6-314.

Part 2

Prosecutions

16-6-201. Jurisdiction of courts. As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this code.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.47, R.C.M. 1935; amd. Sec. 9, Ch. 166, L. 1951; Sec. 4-344, R.C.M. 1947; amd. and redes. 4-6-301 by Sec. 70, Ch. 387, L. 1975; R.C.M. 1947, 4-6-301.

16-6-202. Appeal. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this code, and the practice and procedure on any appeal from any such conviction or order and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

History: En. Sec. 89, Ch. 105, L. 1933; re-en. Sec. 2815.149, R.C.M. 1935; Sec. 4-224, R.C.M. 1947; amd. and redes. 4-6-302 by Sec. 38, Ch. 387, L. 1975; R.C.M. 1947, 4-6-302.

Cross-References

Independent tax appeal procedures to be provided, Art. VIII, sec. 7, Mont. Const.

Criminal appeals and postconviction hearings, Title 46, ch. 20 and 21.

16-6-203. Description of offense. In describing the offense respecting the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consumption of alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this code, it shall be sufficient to state simply the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of alcoholic beverages, without stating:

(1) the name or kind of such alcoholic beverage or the price thereof;

(2) the name of any person to whom it was sold or disposed of or by whom it was taken or consumed or from whom it was purchased or received; or

(3) the quantity of alcoholic beverage, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

History: En. Sec. 80, Ch. 105, L. 1933; re-en. Sec. 2815.139, R.C.M. 1935; Sec. 4-214, R.C.M. 1947; amd. and redes. 4-6-303 by Sec. 31, Ch. 387, L. 1975; R.C.M. 1947, 4-6-303.

Cross-References

Complaints, indictments, and informations generally, Title 46, ch. 11.

16-6-204. Defense need not be negatived. The description of any offense under this code, in the words of this code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this code, may be proved by the defendant but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

History: En. Sec. 81, Ch. 105, L. 1933; re-en. Sec. 2815.140, R.C.M. 1935; Sec. 4-215, R.C.M. 1947; amd. and redes. 4-6-304 by Sec. 32, Ch. 387, L. 1975; R.C.M. 1947, 4-6-304.

16-6-205. Sufficiency of evidence. In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it shall not be necessary that any witness should depose to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration (if any) received therefor or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

History: En. Sec. 82, Ch. 105, L. 1933; re-en. Sec. 2815.141, R.C.M. 1935; Sec. 4-216, R.C.M. 1947; amd. and redes. 4-6-305 by Sec. 33, Ch. 387, L. 1975; R.C.M. 1947, 4-6-305.

Cross-References

Montana evidence statutes and rules, Title 26, ch. 1, 2, and 10.

16-6-206. Proof of violation. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of an alcoholic beverage, it shall not be necessary in any prosecution to show that any money actually passed or any alcoholic beverage was actually consumed if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place or that any consumption of an alcoholic beverage was about to take place. Proof of consumption or intended consumption of an alcoholic beverage on premises on which such consumption is prohibited by some person not authorized to consume an alcoholic beverage thereon shall be evidence that such alcoholic beverage was sold, given to, or purchased by the person consuming or being about to consume or carrying away the same, as against the occupant of the premises.

History: En. Sec. 83, Ch. 105, L. 1933; re-en. Sec. 2815.142, R.C.M. 1935; Sec. 4-217, R.C.M. 1947; amd. and redes. 4-6-306 by Sec. 34, Ch. 387, L. 1975; R.C.M. 1947, 4-6-306.

16-6-207. Analyst's report as prima facie evidence of contents. In any prosecution under this code or the rules made thereunder, production by a police officer, policeman, constable, inspector, or peace officer of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature.

History: En. Sec. 84, Ch. 105, L. 1933; re-en. Sec. 2815.143, R.C.M. 1935; Sec. 4-218, R.C.M. 1947; amd. and redes. 4-6-307 by Sec. 35, Ch. 387, L. 1975; R.C.M. 1947, 4-6-307.

16-6-208. Inference of intoxicating beverage. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating or by a name which is commonly applied to an intoxicating beverage.

History: En. Sec. 85, Ch. 105, L. 1933; re-en. Sec. 2815.144, R.C.M. 1935; Sec. 4-219, R.C.M. 1947; amd. and redes. 4-6-308 by Sec. 36, Ch. 387, L. 1975; R.C.M. 1947, 4-6-308.

16-6-209. Inferences of fact from evidence found. Upon the hearing of any charge of selling or purchasing an alcoholic beverage or of unlawfully having or keeping an alcoholic beverage contrary to any of the provisions of this code, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of alcoholic beverage found in the possession of the person accused or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him and from the frequency with which the alcoholic beverage is received thereat or therein or is removed therefrom and from the circumstances under which it is kept or dealt with.

History: En. Sec. 86, Ch. 105, L. 1933; re-en. Sec. 2815.145, R.C.M. 1935; Sec. 4-220, R.C.M. 1947; amd. and redes. 4-6-309 by Sec. 37, Ch. 387, L. 1975; R.C.M. 1947, 4-6-309.

Part 3

Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful. (1) Except as provided by this code, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale or, directly or indirectly or upon any pretense or upon any device, sell or offer to sell or, in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have or keep any liquor within the state which has not been purchased from the state of Montana. Nothing in this code shall prohibit any person entering this state from any other state or from any foreign country from having in his possession not to exceed 3 wine gallons of alcoholic liquor or beer which liquor or beer shall have been purchased in another state or foreign country, but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine gallons of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the department or to the keeping or having of liquor by brewers, distillers, and other persons duly licensed by the United States for the manufacture of such liquor or to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures, or preparations where such having and keeping is authorized by this code.

(3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extrajudicial process or to sales under executions or other judicial or extrajudicial process to the department or, in the case of beer, to a brewer, beer licensee, club licensee, or canteen licensee.

(4) Except as provided in this code, no person shall, within the state, by himself, his clerk, servant, or agent:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage.

History: (1) thru (3)En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; re-en. Sec. 2815.104, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1957; Sec. 4-150, R.C.M. 1947; amd. and redes. 4-1-201 by Sec. 16, Ch. 387, L. 1975; Sec. 4-1-201, R.C.M. 1947; (4)En. Sec. 49, Ch. 105, L. 1933; re-en. Sec. 2815.108, R.C.M. 1935; Sec. 4-154, R.C.M. 1947; amd. and redes. 4-6-101 by Sec. 19, Ch. 387, L. 1975; Sec. 4-6-101, R.C.M. 1947; R.C.M. 1947, 4-1-201, 4-6-101.

16-6-302. Penalty for sale of alcoholic beverage without license. Any person who has not been issued a license under this code who sells or keeps for sale any alcoholic beverage is guilty of a felony and upon conviction thereof is punishable by a fine of not less than $1,000 or more than $5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both such fine and imprisonment.

History: En. Sec. 18, Ch. 84, L. 1937; Sec. 4-420, R.C.M. 1947; amd. and redes. 4-4-407 by Sec. 97, Ch. 387, L. 1975; R.C.M. 1947, 4-4-407; amd. Sec. 4, Ch. 5, L. 1979.

16-6-303. Sale of liquor not purchased from state store forbidden — penalty. It is unlawful for any licensee to sell or keep for sale or have on his premises for any purpose whatever any liquor except that purchased from the state liquor store, and any licensee found in possession of or selling and keeping for sale any liquor which was not purchased from a state liquor store shall, upon conviction, be punished by a fine of not less than $500 or more than $1,500, by imprisonment for not less than 3 months or more than 1 year, or by both such fine and imprisonment. If the department is satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by his agents, servants, or employees, the department shall immediately revoke the license.

History: En. Sec. 17, Ch. 84, L. 1937; Sec. 4-419, R.C.M. 1947; amd. and redes. 4-6-102 by Sec. 96, Ch. 387, L. 1975; amd. Sec. 14, Ch. 496, L. 1977; R.C.M. 1947, 4-6-102.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-6-304. Providing alcoholic beverage to intoxicated person prohibited. (1) No store manager, retail licensee, or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol.

History: En. Sec. 55, Ch. 105, L. 1933; re-en. Sec. 2815.114, R.C.M. 1935; Sec. 4-160, R.C.M. 1947; amd. and redes. 4-6-103 by Sec. 23, Ch. 387, L. 1975; R.C.M. 1947, 4-6-103.

Cross-References

Unlawful to sell or give alcholic beverages — persons actually or apparently intoxicated, 16-3-301.

16-6-305. Age limit for sale of alcoholic beverages. (1) Except in the case of an alcoholic beverage given to a person under 19 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under 19 years of age or permit any person under that age to consume an alcoholic beverage.

(2) Any person shall be guilty of a misdemeanor who:

(a) invites a person under the age of 19 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person;

(b) permits such person in a public place where an alcoholic beverage is sold to treat, give, or purchase liquor for him; or

(c) holds out such person to be 19 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card.

History: (1)En. Sec. 56, Ch. 105, L. 1933; re-en. Sec. 2815.115, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973; Sec. 4-161, R.C.M. 1947; amd. and redes. 4-6-104 by Sec. 24, Ch. 387, L. 1975; Sec. 4-6-104, R.C.M. 1947; (2)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-6-104, 4-6-404(part); amd. Sec. 1, Ref. 74, app. Nov. 7, 1978; (3)En. Sec. 1, Ch. 26, L. 1979; amd. Sec. 4, Ch. 186, L. 1979.

Cross-References

Unlawful to sell or give alcoholic beverages — persons under 19 years old, 16-3-301.

Penalty, 16-6-314.

16-6-306. Bottle clubs prohibited. The operation of beer or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of beer or liquor, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic liquors, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963; Sec. 4-172, R.C.M. 1947; redes. 4-6-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-105.

16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited. No person within the state of Montana shall consume any alcoholic beverage on any premises where an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any alcoholic beverage to be consumed on such premises.

History: En. Sec. 51, Ch. 105, L. 1933; re-en. Sec. 2815.110, R.C.M. 1935; Sec. 4-156, R.C.M. 1947; amd. and redes. 4-6-106 by Sec. 20, Ch. 387, L. 1975; R.C.M. 1947, 4-6-106.

16-6-308. Patent medicine prohibition. From and after the date of notification under 16-1-202(3), any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture, or preparation so prohibited shall be guilty of an offense under this code.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part).

Cross-References

Penalty, 16-6-314.

16-6-309. Liquor administered to institution inmates. No liquor shall be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which he is in charge, and every person in charge of an institution who administers liquor in evasion or violation of this code shall be guilty of an offense against this code.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part).

Cross-References

Penalty, 16-6-314.

16-6-310. Officer or agent of corporation deemed party to offense. Where an offense against this code is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed and shall be personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section shall relieve the corporation or the person who actually committed the offense from liability therefor.

History: En. Sec. 72, Ch. 105, L. 1933; re-en. Sec. 2815.131, R.C.M. 1935; Sec. 4-206, R.C.M. 1947; redes. 4-6-107 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-107.

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-6-311. Occupant of premises deemed party to offense. Upon proof of the fact that an offense against this code has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section shall relieve the person actually committing the offense from liability therefor.

History: En. Sec. 73, Ch. 105, L. 1933; re-en. Sec. 2815.132, R.C.M. 1935; Sec. 4-207, R.C.M. 1947; redes. 4-6-108 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-108.

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-6-312. Premises where liquor illegally sold public nuisance. Any room, house, building, boat, vehicle, structure, or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 45-8-111 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $500 and be imprisoned not less than 30 days or more than 6 months.

History: En. Sec. 8, Ch. 30, L. 1937; Sec. 4-238, R.C.M. 1947; amd. and redes. 4-6-401 by Sec. 43, Ch. 387, L. 1975; amd. Sec. 16, Ch. 496, L. 1977; R.C.M. 1947, 4-6-401.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-6-313. Injunction actions. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear, by affidavits or otherwise, to the satisfaction of the court or judge in vacation that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this code constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor or beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place or any part thereof. Upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for 1 year thereafter. The court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than $500 or more than $1,000, payable to the state of Montana and conditioned that liquor or beer will not thereafter be manufactured, sold, or bartered therein or thereon and that he will pay all fines, costs, and damages that may be assessed for any violations of this code upon said property.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.49, R.C.M. 1935; Sec. 4-346, R.C.M. 1947; amd. and redes. 4-6-402 by Sec. 71, Ch. 387, L. 1975; R.C.M. 1947, 4-6-402.

Cross-References

Injunctions generally, Title 27, ch. 19.

Injunction against nuisance, 27-30-103.

Action to abate public nuisance, 45-8-112.

16-6-314. Penalty for violating code — revocation of license. Any person violating any of the provisions of this code shall, upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided in 46-18-212, except as is herein otherwise provided. If any retail licensee is convicted of any offense under this code, his license shall be immediately revoked or in the discretion of the department such other sanction imposed as may be authorized under 16-4-406. Further, if any person under 19 years of age is convicted of an offense under this code he shall be subject to a $100 fine or 30 days in confinement.

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; R.C.M. 1947, 4-6-404(part); amd. Sec. 5, Ch. 186, L. 1979.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

Commutation of juvenile's sentence, transfer to juvenile correctional facility, 53-30-212.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

REGULATION OF CIGARETTE MARKETING

Part 1 — Policy and Definitions

Section

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Part 2 — Sales Price of Cigarettes

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Part 1

Policy and Definitions

16-10-101. Short title. This chapter shall be known, designated, and cited as "The Montana Cigarette Sales Act".

History: En. Sec. 1, Ch. 258, L. 1965; R.C.M. 1947, 51-302.

16-10-102. Declaration of policy. The advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades with the intent of injuring competitors or lessening competition is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965; R.C.M. 1947, 51-301; amd. Sec. 5, Ch. 5, L. 1979.

16-10-103. Definitions. When used in this chapter, the following words and phrases shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint-stock company, club, agency, syndicate, cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer;

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this chapter.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such department.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution, in any manner or by any means whatever.

(7) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail", "sale at retail", and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made

in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler" as evidenced by the standards and methods of accounting regularly employed by the wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends, or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes".

(b) In the absence of the filing with the department of proof which the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be 5% of the "basic cost of cigarettes" to the wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall be considered to be ¾ of 1% of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer" pursuant to this subsection, add the "cost of doing business by the wholesaler", as determined in subsection (10)(b) of this section, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer".

(b) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be 10% of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: **En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973; R.C.M. 1947, 51-303.**

16-10-104. Powers of department. In addition to the penalties and rights imposed and set forth in 16-10-401 and 16-10-402, the department shall enforce the provisions of this chapter. The department shall have the power to adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

History: **En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part).**

Cross-References

Rulemaking under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 2

Sales Price of Cigarettes

16-10-201. Wholesaler-to-wholesaler sales. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler", as provided by 16-10-103(10), except that no such sale shall be made at a price less than the "basic cost of cigarettes", as defined in 16-10-103(9), but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of 16-10-103(10).

History: **En. Sec. 4, Ch. 258, L. 1965; R.C.M. 1947, 51-305.**

16-10-202. Selling cigarettes in combination with other articles. In all advertisements, offers for sale, or sales involving two or more items at a combined price, at least one of which is cigarettes, and in all advertisements, offers for sale, or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise), if such rebate or concession offered or given in connection with the sale of cigarettes (which are sold by said wholesaler or retailer in the ordinary course of his trade or business) is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler", respectively, of the total costs of all articles, products, commodities, gifts, and concessions included in such transactions.

History: **En. Sec. 5, Ch. 258, L. 1965; R.C.M. 1947, 51-306.**

16-10-203. Sales to meet competition permitted. (1) (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this chapter.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in this chapter.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in 16-10-304 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer" or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey" made pursuant to 16-10-303, may be considered to be the "price of a competitor" within the meaning of this section.

History: **En. Sec. 7, Ch. 258, L. 1965; R.C.M. 1947, 51-308.**

16-10-204. Determining cost — fictitious prices — free merchandise. (1) In determining "cost to the retailer" and "cost to the wholesaler", the department or a court shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under any of the provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price or upon terms or in such a manner or under such invoices as to conceal the true cost, discounts, or terms of purchase and shall also receive and consider as bearing on the bona fides of such cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer thereof for display, advertising, promotion purposes, or otherwise shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: **En. Sec. 9, Ch. 258, L. 1965; R.C.M. 1947, 51-310.**

16-10-205. Purchases outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased through the ordinary channels of trade.

History: **En. Sec. 10, Ch. 258, L. 1965; R.C.M. 1947, 51-311.**

Part 3

Unlawful Practices — Exceptions

16-10-301. Sales below cost — evidence of unlawful intent. (1) It shall be unlawful and a violation of this chapter:

(a) for any retailer or wholesaler with intent to injure a competitor or substantially lessen competition to:

(i) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be;

(ii) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given;

(b) for any retailer to:

(i) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler", as defined in this chapter;

(ii) induce or attempt to induce or procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: **En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(1), (2), (4).**

16-10-302. Illegal contracts. Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal and void contract, and no recovery thereon shall be had.

History: **En. Sec. 8, Ch. 258, L. 1965; R.C.M. 1947, 51-309.**

Cross-References

Illegality in contracts, 28-2-701 through 28-2-722, 28-2-803.

16-10-303. Cost survey as evidence. Where a cost survey pursuant to cost accounting practices, including those defined in 16-10-103(10)(a), has been made by the department or by a trade association or other industry group for the trading area in which the offense is committed to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler", said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this chapter.

History: **En. Sec. 11, Ch. 258, L. 1965; R.C.M. 1947, 51-312.**

16-10-304. Exceptions. The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(1) as an isolated transaction and not in the usual course of business;

(2) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) where cigarettes are sold upon the final liquidation of a business; or

(4) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: **En. Sec. 6, Ch. 258, L. 1965; R.C.M. 1947, 51-307.**

Part 4

Enforcement

16-10-401. Penalty for sales at less than cost. Any retailer or wholesaler who violates the provisions of 16-10-301 shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than $500 for each such offense. Any individual who, as a director, officer, partner, member, or agent of any person violating the provisions of this chapter, assists or aids, directly or indirectly, in such violation shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

History: **En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(3).**

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-10-402. Injunctive and other civil relief. (1) In addition to penalties provided by 16-10-401, any person injured by any violation of this chapter or any trade association which is representative of such a person may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation. If in such action a violation of this chapter shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(2) In the event no injunctive relief is sought or required, any person injured by a violation of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The measure of damages in such action shall be the same as prescribed in subsection (1) of this section.

History: **En. Sec. 12, Ch. 258, L. 1965; R.C.M. 1947, 51-313.**

Cross-References
Injunctions generally, Title 27, ch. 19.

16-10-403. Revocation or suspension of license or permit. (1) The department is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee or permittee to comply with any of the provisions of this chapter.

(2) No license or licenses shall be suspended or revoked except upon notice to the licensee and after a hearing prescribed by said department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than 5 or more than 20 consecutive business days and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than 20 consecutive business days or more than 12 months, and in the event the department finds the offender has been guilty of willful and persistent violations, it may revoke such licensee's license or licenses.

(3) Any person whose license or licenses have been so revoked may apply to the department at the expiration of 1 year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the department if it shall appear to the satisfaction of said department that the licensee will comply with the provisions of this chapter and the rules promulgated thereunder.

(4) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947].

(5) Any determination by the department and any order of suspension or revocation of a license or licenses thereunder or refusal to reinstate a license or licensee after revocation shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part).

Cross-References
Tax appeals, Art. VIII, sec. 7, Mont. Const.
Contested cases — notice and hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.
Montana Rules of Civil Procedure, Title 25, ch. 20.

CHAPTER 11

TAXATION OF TOBACCO PRODUCTS

Part 1 — Tax on Cigarettes

Section
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Chapter Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

Part 1

Tax on Cigarettes

16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the federal Internal Revenue Code of 1954 in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963; R.C.M. 1947, 84-5606.1.

16-11-102. Definitions. (1) As used in this chapter, the following definitions shall apply unless the context requires otherwise:

(a) The word "department" shall mean the department of revenue of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(2) As used in this part, the following definitions shall apply unless the context requires otherwise:

(a) The words "insignia" or "indicia" shall mean the impression or mark approved by the department under the provisions of this part.

(b) The words "full face value of insignia" shall mean the total amount of the tax levied under this part.

(c) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(d) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.

(e) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this part.

(f) The words "cigarette vendor" shall mean and include any person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines which he operates for a profit in premises or locations other than his own. Such person shall be treated as a wholesaler. Any person who operates less than 10 cigarette vending machines shall be treated as a retailer.

(g) The word "subjobber" shall mean and include any person who purchases cigarettes from a licensed wholesaler with the Montana cigarette tax insignia affixed thereto and sells or offers to sell such cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers shall not constitute such retailers as subjobbers. It is further provided that a subjobber shall use the license in the interest of the general public. If during any month more than 35% of volume of cigarette sales be with any retail client whose business is controlled directly or indirectly through sanguinity or affinity with the owner or employer for such retail business, the license shall be deemed to have been used or to be intended to be used in violation of 16-11-144.

(h) The words "licensed subjobber" shall mean a subjobber duly licensed under the provisions of this part, and he shall be treated as a wholesaler.

(i) The word "retailer" shall mean any person, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

(j) The words "licensed retailer" shall mean any person, other than a wholesaler, subjobber, or cigarette vendor, who is duly licensed under the provisions of this part.

(k) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by 30-2-106, or by gift, barter, or exchange.

History: **En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973; amd. Sec. 1, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.2.**

Cross-References

Consumer protection and unfair trade practices, Title 30, ch. 14, parts 1 and 2.

16-11-103. Powers of department. (1) The department shall have the power and authority to prescribe all rules not inconsistent with the provisions of this part for the detailed and efficient administration thereof. All such rules and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by part 2 of this chapter.

(2) The department and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof or any agent is authorized to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. The director or his authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to such inquiry. The director or his agent, after the hearing, shall make findings and an order in writing, which findings and order shall be filed in the office of the department and open for public inspection.

(3) The department is hereby authorized to appoint such additional assistants and to establish an additional division of cigarette enforcement as may be required to carry out the provisions of this part.

(4) The department is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this part.

History: **(1)Ap. p. Sec. 26, Ch. 140, L. 1969; amd. Sec. 219, Ch. 516, L. 1973; Sec. 84-5606.27, R.C.M. 1947; Ap. p. Sec. 7, Ch. 12, Ex. L. 1969; amd. Sec. 254, Ch. 516, L. 1973; Sec. 84-6807, R.C.M. 1947; (2)En. Sec. 22, Ch. 140, L. 1969; amd. Sec. 110, Ch. 405, L. 1973; Sec. 84-5606.23, R.C.M. 1947; (3)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; (4)En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; Sec. 84-5606.30, R.C.M. 1947; R.C.M. 1947, 84-5606.23, 84-5606.27, 84-5606.28(part), 84-5606.30(part), 84-6807.**

Cross-References

Rulemaking under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

16-11-104. Carriers to report cigarette shipments. Every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state any cigarettes shall report in writing such shipments or deliveries to the department on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered, the quantity as shown by the bill of lading, and such other information as the department may require.

History: **En. Sec. 19, Ch. 140, L. 1969; amd. Sec. 215, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.20.**

16-11-105 through 16-11-110 reserved.

16-11-111. Cigarette sales tax. From and after July 1, 1981, there is hereby levied, imposed, and assessed and there shall be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax which shall be paid prior to the time of sale and delivery thereof: 16 cents on each package containing not more than 20 cigarettes and, when packages contain more than 20 cigarettes, then 16 cents on each 20 or fraction of 20 cigarettes contained in such package.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(2) thru (4); amd. Sec. 1, Ch. 267, L. 1981; amd. Sec. 1, Ch. 608, L. 1983.

Compiler's Comments

1983 Amendment: Changed tax from 12 cents to 16 cents twice.

1981 Amendment: Substituted "July 1, 1981" for "March 5, 1971" following "after" in the first sentence; consolidated the sales tax on cigarettes by adding the 2-cent tax in (2) and the 1-cent tax in (3) to subsection (1); deleted former subsections (2) and (3). For former text, see sec. 4, Ch. 222, L. 1971.

Cross-References

Percentage of cigarette tax pledged, 17-5-408.

16-11-112. Tax on ultimate consumer. All taxes paid pursuant to 16-11-111 shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax.

History: Ap. p. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; Ap. p. Sec. 9, Ch. 140, L. 1969; Sec. 84-5606.10, R.C.M. 1947; R.C.M. 1947, 84-5606(1), 84-5606.10(part).

16-11-113. Tax insignia. (1) Within 72 hours after receipt by the distributor or dealer of any cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto the required insignia denoting the tax thereon. A person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.

(2) Said insignia shall be properly canceled prior to sale or removal for consumption, under such regulations as the department may prescribe.

(3) Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened.

(4) Wholesalers and retailers licensed under this part may buy, sell, or have in their possession only cigarettes which have the insignia provided for in this part on each package. The insignia provided for in this part shall be sold to and affixed by licensed wholesalers and licensed retailers only.

(5) Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer, or other person without the insignia affixed

and canceled or not marked as having been received by the unlicensed wholesaler, retailer, or person within the preceding 72 hours, the presumption shall be that such cigarettes are kept therein in violation of the provisions of this part.

History: (1) thru (3)En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; (4)En. Sec. 6, Ch. 140, L. 1969; Sec. 84-5606.7, R.C.M. 1947; (5)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; R.C.M. 1947, 84-5606(part), 84-5606.7, 84-5606.28(part); amd. Sec. 1, Ch. 382, L. 1979.

16-11-114. Insignia discount. Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less the following percentage of the face value upon payment therefor as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana:

(1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

(2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

(3) 3% for purchases in excess of 5,160 cartons in any calendar month.

History: En. Sec. 11, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.12; amd. Sec. 2, Ch. 267, L. 1981; amd. Sec. 1, Ch. 600, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of introductory clause after "less" deleted "3%" and inserted "the following percentage"; inserted (1) through (3).

1981 Amendment: Reduced the discount on the purchase of an insignia from 8% to 3% of face value; deleted "This defrayment is not applicable to that portion of the tax collected for any veterans' honorarium or long-range building program." at the end of the section.

16-11-115. Tax meter machine. The department may authorize any wholesaler or retailer of cigarettes licensed under this part to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia shall be one approved by the department. Each package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter, and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this part. The department shall supervise and check the operation of such tax meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer of the county in which the machine is operated, who is authorized to and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the department any amounts collected from said licensee.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 210, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.13; amd. Sec. 2, Ch. 600, L. 1983.

Compiler's Comments

1983 Amendment: In sixth sentence, after "defrayment" deleted "of 8%".

16-11-116. Resale of insignia prohibited — rebate. No wholesaler or retailer shall resell to any other wholesaler or retailer any insignia purchased by him from the department. Any wholesaler or retailer who has on hand any meter settings at the time of discontinuing his business of selling cigarettes may apply to the department and be paid the face value of said meter settings less the amount of the expense defrayment allowed by 16-11-114.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 211, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.14.

16-11-117. When payment for insignia due. The department shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within 30 days after the date of purchase and shall require such licensee to file with the department a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for 1 complete calendar year, after which the department may permit him 30 days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided.

History: En. Sec. 14, Ch. 140, L. 1969; amd. Sec. 212, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.15.

16-11-118. Records of tax meter users. All tax meter users shall keep for a period of 1 year all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also an accurate record of all sales of cigarettes by such tax meter users, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and destination. Such tax meter users shall permit the department, its assistants, authorized agents, or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of such tax as may be due or unpaid.

History: En. Sec. 16, Ch. 140, L. 1969; amd. Sec. 214, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.17.

16-11-119. Disposition of taxes — retirement of bonds. All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: 79.75% in the long-range building program fund in the debt service fund type and 20.25% in the long-range building program fund in the capital projects fund type.

History: **En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.30(part); amd. Sec. 3, Ch. 267, L. 1981; amd. Sec. 7, Ch. 281, L. 1983; amd. Sec. 2, Ch. 608, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 281, substituted "fund in the debt service fund type" for "account in the sinking fund"; and substituted "fund in the capital projects fund type" for "account in the bond proceeds and insurance clearance fund".

Chapter 608, increased the amount deposited in the long-range building program fund in the debt service fund type from 73% to 79.75% and reduced the amount deposited in the long-range building program fund in the capital projects fund type from 27% to 20.25%.

1981 Amendment: Deleted "(1)" after "16-11-111" in the first sentence; deleted "50% in the general fund" after "as follows:" in the middle of the section; increased the amount deposited in the long-range building program account in the sinking fund from 15% to 73%; reduced the amount deposited in the long-range building program account in the bond proceeds and insurance clearance fund from 35% to 27%; deleted former subsections (2) through (5). For former text see sec. 222, Ch. 516, L. 1973.

16-11-120. Cigarette licenses. Every wholesaler, subjobber, retailer, or cigarette vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or cigarette vendor. A separate application and a separate license shall be required for each place of business owned, controlled, or operated by such wholesaler, subjobber, retailer, or cigarette vendor within the state of Montana. Application forms shall require the type and general description of applicant organizations, names of all known owners, and such other pertinent information as the department may require in regularly promulgated regulations.

History: **En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973; amd. Sec. 2, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.3.**

16-11-121. Vending machines not places of business. Cigarette vending machines shall not be considered as places of business per se, but a report of each and all machines shall be made on forms prescribed by the department which shall state the name and address of the cigarette vendor, the assigned location of each machine, with best machine identification available, type of business, and such other information as the department may require for proper administration of this part.

History: **En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.4.**

16-11-122. License fees — renewal. (1) Each application for a wholesaler's license shall be accompanied by a fee of $50.

(2) Each application for a subjobber's license shall be accompanied by a fee of $50.

(3) Each application for a retailer's license shall be accompanied by a fee of $5.

(4) These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above and shall be effective for 1 year, without proration, and are not transferable.

History: **En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part).**

16-11-123. Display of license. (1) Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled, or operated by such wholesaler, subjobber, retailer, or cigarette vendor.

(2) Each cigarette vendor shall affix a license decal furnished by the department in a prominent position on each vending machine.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part).

16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part shall be deposited with the state treasurer in the department's cigarette enforcement account in the state special revenue fund.

(2) For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the department a sum deemed justified and reasonable to operate the department's cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of $7,500 not needed for the administration of this part shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within 15 days of the last day of the biennium.

(3) All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973; amd. Sec. 6, Ch. 286, L. 1977; R.C.M. 1947, 84-5606.6(part); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

16-11-125 through 16-11-130 reserved.

16-11-131. Transporting cigarettes without insignia a misdemeanor. It shall be unlawful for any person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this part, except for a person specifically exempted in 16-11-132(2). Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided.

History: En. Sec. 20, Ch. 140, L. 1969; amd. Sec. 216, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part); amd. Sec. 2, Ch. 382, L. 1979.

16-11-132. Unlawful to sell cigarettes without valid license — exceptions. (1) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless his license is current and valid under the provisions of this part.

(2) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under this part or who is not licensed by the state in which he sells, offers to sell, or intends to sell cigarettes, except that a resident wholesaler, resident subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to a resident or nonresident person, wholesaler, subjobber, or retailer not licensed under this chapter if:

(a) such resident or nonresident person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) such resident or nonresident person, wholesaler, subjobber, or retailer furnishes documentary evidence that he is exempt from state cigarette taxation provisions; and

(c) such resident or nonresident person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing that he is exempt from state cigarette taxation provisions.

(3) Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 8, Ch. 140, L. 1969; amd. Sec. 1, Ch. 319, L. 1973; R.C.M. 1947, 84-5606.9; amd. Sec. 3, Ch. 382, L. 1979.

16-11-133. Sale and use of cigarettes without insignia unlawful. Every person who sells any package of cigarettes which does not bear the insignia required by this part and every person who uses or consumes a cigarette within this state, taken from a package which does not bear the required insignia, is guilty of a misdemeanor and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.

History: En. Sec. 17, Ch. 140, L. 1969; amd. Sec. 12, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.18; amd. Sec. 4, Ch. 382, L. 1979.

16-11-134. Forged license stamp or insignia. Every person who shall make, alter, forge, or counterfeit any license stamp or insignia provided for in this law or who shall assist or be concerned therein or who shall have in his possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent to defraud the state is guilty of forgery.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part).

Cross-References

Criminal offense of and punishment for forgery, 45-6-325.

16-11-135 through 16-11-140 reserved.

16-11-141. Powers of arrest — search and seizure. The department shall administer and enforce this part, and the director and his agents have the powers of peace officers and may arrest any person violating any provision of this part, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place.

History: En. Sec. 25, Ch. 140, L. 1969; amd. Sec. 112, Ch. 405, L. 1973; amd. Sec. 13, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.26.

Cross-References

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

16-11-142. Duties of county attorneys and peace officers. In the enforcement of this part, the department may call to its assistance, and it shall be the duty of any county attorney or any peace officer in this state to assist the department in the enforcement of this part.

History: En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.28(part).

16-11-143. Penalty for unpaid cigarette tax. (1) If any person fails or refuses to pay the tax required by this part when due, the department shall proceed to determine the tax due from such information as the department can obtain and shall assess the tax so determined against such person and notify him of the amount. After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or $5 per day for each day after the date of such notice, whichever is greater.

(2) In the case of any violation of this chapter, the department shall be entitled to sue, in the district where the department maintains its principal office, for the amount of the unpaid tax and costs, including reasonable expense of the department in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Secs. 15, 28, Ch. 140, L. 1969; amd. Secs. 213, 221, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.16, 84-5606.29.

16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision of this part or of The Montana Cigarette Sales Act (Title 16, chapter 10) and with any lawful rule of the department made pursuant to said laws.

(2) Any person aggrieved by such revocation or suspension may apply to the department for a hearing which shall be open to the public and may further appeal to the court.

(3) When a license has been duly revoked, no license shall again issue to such licensee for a period of 1 year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed 1 year.

(4) Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969; amd. Sec. 209, Ch. 516, L. 1973; amd. Sec. 4, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.8.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

16-11-145. Place where violations committed a public nuisance. Every person having possession or control of or who maintains a building or place where cigarettes are sold in violation of this part or permits the same to be done in any place or building possessed, controlled, or maintained by him is guilty of maintaining and keeping a nuisance, and the building or place so used, together with the personal property and fixtures used in connection therewith, shall be deemed a nuisance. Such person shall be enjoined and such building or place, personal property, and fixtures abated as a nuisance at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.19.

Cross-References

Injunctions, Title 27, ch. 19.

Public nuisances — remedies, Title 27, ch. 30, part 2.

16-11-146. Penalty for forged license stamp or insignia. A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part).

16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with such transportation and found in such means of transportation, shall be subject to seizure by the department, its duly authorized agent, any sheriff or deputy, or other peace officer and shall be subject to forfeiture in the manner hereinafter provided.

(2) Upon the seizure of any cigarettes and within 2 days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the department. The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-302 through 46-5-305.

History: En. Secs. 20, 21, Ch. 140, L. 1969; amd. Secs. 216, 217, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part), 84-5606.22.

16-11-148. Violation a misdemeanor unless otherwise provided — penalties. Unless hereinbefore expressly otherwise provided, the violation of any provision of this part shall constitute a misdemeanor and any person violating any such provision shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment and, if such person is the holder of a license issued under this part, such license shall be revoked by the department for a period of 1 year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.31.

Cross-References

Place of imprisonment when none is specified — sentence for 1 year or less, 46-18-211.

16-11-149. Hearings before state tax appeal board. Any person aggrieved by any action of the department or its duly authorized agents under the provisions of this part may apply to the state tax appeal board, in writing, for a hearing or rehearing thereon within 30 days after such action of the department or its authorized agents. The board shall promptly consider such application, set same for hearing, and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969; amd. Sec. 111, Ch. 405, L. 1973; amd. Sec. 7, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.24.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

State Tax Appeal Board, Title 15, ch. 2.

16-11-150. Appeal to district court. Any person aggrieved by any action or decision of the state tax appeal board or a licensing decision of the department made under the provisions of this part may appeal therefrom to the district court in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 140, L. 1969; amd. Sec. 218, Ch. 516, L. 1973; amd. Sec. 8, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.25.

Cross-References

Judicial review under Montana Administrative Procedure Act, 2-4-701 through 2-4-711.

Part 2

Tax on Tobacco Products Other Than Cigarettes

16-11-201. Definitions. As used in this part, the following definitions shall apply unless the context requires otherwise:

(1) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner or by any means whatever, of tobacco products other than cigarettes.

(2) The word "wholesaler" shall mean any person who purchases tobacco products other than cigarettes directly from the manufacturer or who purchases tobacco products other than cigarettes from any other person who purchases from the manufacturer and who acquires such products for the purpose of bona fide sales to retail dealers or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products other than cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of tobacco products.

(3) The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(4) The words "wholesale price" shall mean the established price for which a manufacturer sells a tobacco product other than cigarettes to a wholesaler or unclassified acquirer before any discount or other reduction.

History: En. Sec. 1, Ch. 12, Ex. L. 1969; amd. Sec. 252, Ch. 516, L. 1973; R.C.M. 1947, 84-6801(4) thru (6).

16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax. (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of tobacco products other than cigarettes and recovered from the ultimate consumer or user. Any person selling tobacco products other than cigarettes at retail shall state or separately display in the premises where such products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold or possessed in this state and there shall be collected and paid to the state of Montana a tax of 12 ½% of the wholesale price of such products to the wholesaler, excepting therefrom such products as may be shipped from Montana and destined for retail sale and consumption outside the state of Montana.

History: **En. Sec. 2, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6802.**

Cross-References

Percentage of tax pledged — tobacco products other than cigarettes, 17-5-408.

16-11-203. Wholesaler to precollect tax. The tax imposed shall be precollected and paid by the wholesaler to the department prior to the sale of tobacco products other than cigarettes to the purchaser from the wholesaler.

History: **En. Sec. 3, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6803.**

16-11-204. Wholesaler's sale without tax prepayment a misdemeanor — penalty. Any wholesaler who shall sell any tobacco products other than cigarettes without first making payment of the tax provided for by this part in the manner and at the time specified shall be guilty of a misdemeanor and further shall be enjoined by an action pursued in the district court of the county of Lewis and Clark, Montana, from making further sale of tobacco products other than cigarettes for a period not less than 1 month or more than 1 year.

History: **En. Sec. 4, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6804.**

Cross-References

Injunctions, Title 27, ch. 19.

Penalty for misdemeanor statute not setting a penalty, 46-18-212.

16-11-205. Unlawful sales — penalty. It shall be unlawful for any person, individual, firm, or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this part. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than $500 or imprisonment for not more than 6 months.

History: **En. Sec. 5, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6805.**

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-11-206. Wholesaler's discount — disposition of taxes. The taxes specified in this part that are paid by the wholesaler shall be paid to the department in full less a 5% defrayment for his collection and administrative expense and shall be deposited by the department in the long-range building program debt service fund. Refunds of the tax paid shall be made as provided in 15-1-503 in cases where the tobacco products purchased become unsalable.

History: **En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973; R.C.M. 1947, 84-6806; amd. Sec. 8, Ch. 281, L. 1983.**

Compiler's Comments

1983 Amendment: At end of first sentence, substituted "building program debt service fund" for "building sinking fund No. 338766".

TITLE 17

STATE FINANCE

Ch.
1. General Administration.
2. Accounting.
3. Federal Revenues and Endowments.
4. Debt Collection.
5. Public Bond Issues.
6. Deposits and Investments.
7. Budgeting.
8. Disbursement and Expenditure.

CHAPTER 1

GENERAL ADMINISTRATION

Part 1 — General Administration and Fiscal Officers

Section
17-1-101. Definition of department.
17-1-102. Uniform accounting system and expenditure control.
17-1-103. Assistance to legislature.
17-1-104 through 17-1-110 reserved.
17-1-111. General fiscal duties of state treasurer.
17-1-112. Access to offices.
17-1-113. Securities lending program.
17-1-114 through 17-1-120 reserved.
17-1-121. General fiscal duties of state auditor.
17-1-122. Discretionary duties of state auditor.
17-1-123. Access to offices.
17-1-124 through 17-1-130 reserved.
17-1-131. General duties of budget director.
17-1-132. Access to information.

Part 2 — Anticipation of Revenue

17-1-201. Issuance of notes in anticipation of revenue.
17-1-202. Limitation on amount of notes.
17-1-203. Interest rate.
17-1-204. Payment — pledge of taxes and revenue.

Chapter Cross-References

Auditing officer to require affidavits of other officers — accounts, 2-2-205.

Personnel administration, 2-18-102.

Public Contracts, Title 18.

Part 1

General Administration and Fiscal Officers

Part Cross-References

State Auditor to require affidavit of officer — accounts, 2-2-205.

Treasurer to withhold payment, 2-2-206.

Department of Administration — audit duties, Title 2, ch. 7, part 5.

Budget Director — classification and compensation, 2-18-204 through 2-18-207.

State Auditor to withhold salaries of judges until no proceeding remains pending, 3-5-212.

Budget Director — preparation of fiscal note, 5-4-203.

Duties of Legislative Fiscal Analyst, 5-12-302.

Budget Director — approval of budget amendments, 5-12-401.

State Auditor — warrant to Fire Department Relief Association, 19-10-305.

State Auditor to withhold salaries until books returned, 22-1-506.

State Auditor — audits of claims in bank liquidation, 32-1-537.

Ex officio treasurer of Unemployment Compensation Account, 39-51-402.

Treasurer for hail insurance, 80-2-232.

17-1-101. Definition of department. Except in chapter 3, part 3, and chapter 4, part 1, and unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.

History: **En. 82-108.1 by Sec. 44, Ch. 326, L. 1974; R.C.M. 1947, 82-108.1.**

17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees eliminated, public service improved, and the cost of government reduced.

(2) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of agencies and institutions. Copies of all such plans shall be delivered to the governor, and additional copies shall be retained in the office of the department for inspection by the members of the legislature.

(3) The department shall examine all financial affairs of every state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part.

History: **(1)En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; 82-109, R.C.M. 1947; (2), (3)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 82-109(1), 82-110(1), (2).**

17-1-103. Assistance to legislature. (1) The department shall make all reports and submit all information and data the legislature requests and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate.

(2) The department shall, during the consideration of appropriation measures by the house and senate, devote so much of its time as may be required by the above-named committees, under the direction of the respective chairmen of the committees.

History: **En. Sec. 11, Ch. 194, L. 1951; amd. Sec. 35, Ch. 93, L. 1969; amd. Sec. 51, Ch. 326, L. 1974; R.C.M. 1947, 82-111.**

Cross-References

Legislative Finance Act, Title 5, ch. 12.

17-1-104 through 17-1-110 reserved.

17-1-111. General fiscal duties of state treasurer. (1) The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the state treasurer to:

(a) receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon which they are drawn;

(c) upon payment of any warrant, take upon the back thereof the receipt of the person to whom it is paid;

(d) keep an account of all moneys received and disbursed;

(e) at the request of either house of the legislature or of any committee thereof, give information in writing as to the condition of the treasury or upon any subject relating to the duties of his office;

(f) discharge such other duties as may be imposed upon him by law.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(1) thru (7); amd. Sec. 1, Ch. 70, L. 1979.

Cross-References

Strict accountability, Art. VIII, sec. 12, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Maintenance of fund and account records and interfund loans, 17-2-105.

State money — how expended by Treasurer, 17-8-301.

Payment, registry, and interest, 17-8-304.

17-1-112. Access to offices. The state treasurer shall have full access to all offices of the state for inspection of such books, papers, and accounts thereof as concern his duties.

History: En. Sec. 447, Pol. C. 1895; re-en. Sec. 187, Rev. C. 1907; re-en. Sec. 186, R.C.M. 1921; re-en. Sec. 186, R.C.M. 1935; R.C.M. 1947, 79-805.

Cross-References

Public records management, Title 2, ch. 6, part 2.

17-1-113. Securities lending program. The state treasurer may, subject to the approval of the state board of investments, establish a securities lending program for all securities held in custody under 17-1-111. All loaned securities must be secured by equivalent securities of the same class in an amount equal to at least 100% of the market value of the loaned securities as determined by the board. All fees and proceeds earned by the securities lending program must be deposited pro rata in the funds that loaned the securities.

History: En. Sec. 1, Ch. 272, L. 1981.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Board of Investments — allocation — composition — quasi-judicial, 2-15-1005.

17-1-114 through 17-1-120 reserved.

17-1-121. General fiscal duties of state auditor. It is the duty of the state auditor to:

(1) superintend the fiscal concerns of the state;

(2) give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office when requested;

(3) suggest plans for the improvement and management of the public revenues;

(4) keep an account of all warrants drawn upon the treasurer and such other account and appropriation records that he determines to be essential for the support of the accounting records maintained in the office of the department of administration;

(5) keep an account between the state and the state treasurer and therein charge the state treasurer with the balance in the treasury when he came into office and with all moneys received by him and credit him with all warrants drawn on and paid by him;

(6) keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, and the date issued;

(7) require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts;

(8) draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury, but no warrant must be drawn unless authorized by law;

(9) authenticate with his official seal all warrants drawn by him and all copies of papers issued from his office;

(10) collect and pay into the state treasury all fees received by him;

(11) perform such other duties as are prescribed by law.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(1) thru (6), (9), (14), (15), (18), (19).

Cross-References

Insurance Department, 2-15-1902.

Commissioner of Insurance designated, 2-15-1903.

Payment, registry, and interest, 17-8-304.

17-1-122. Discretionary duties of state auditor. In his discretion it is the duty of the state auditor to:

(1) inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public moneys;

(2) require all persons who have received moneys or securities or have had the disposition or management of any property of the state of which an account is kept in his office to render statements thereof to him, and all such persons must render statements at such times and in such form as he may require;

(3) promulgate rules regarding the distribution and processing of warrants issued;

(4) establish, under the joint control of the department of administration and the state auditor, a system of filing and storage of the original copy of claims paid by state warrant.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(10), (11), (16), (20).

Cross-References

Public records management, Title 2, ch. 6, part 2.

Audits of political subdivisions, Title 2, ch. 7, part 5.

17-1-123. Access to offices. The state auditor shall have access to all offices of the state for the inspection of such books, papers, and accounts thereof as may concern his duties.

History: En. Sec. 426, Pol. C. 1895; re-en. Sec. 176, Rev. C. 1907; re-en. Sec. 156, R.C.M. 1921; re-en. Sec. 156, R.C.M. 1935; R.C.M. 1947, 79-106.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Discretionary duties of State Auditor, 17-1-122.

17-1-124 through 17-1-130 reserved.

17-1-131. General duties of budget director. (1) The budget director in addition to the duties set forth in chapter 7 of this title shall perform such other duties as the governor as chief budget officer of the state may direct.

(2) He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislature and the receipts and disbursements made by any department, office, or institution of the state.

(3) The budget director shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance, and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959; amd. Sec. 6, Ch. 282, L. 1974; R.C.M. 1947, 79-1017.

Cross-References

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Powers and duties of governor, 2-15-201.

Legislative Finance Act, Title 5, ch. 12.

Governor chief budget officer — appointment of Budget Director, 17-7-103.

17-1-132. Access to information. The budget director shall have power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

History: En. Sec. 7, Ch. 158, L. 1959; amd. Sec. 7, Ch. 282, L. 1974; R.C.M. 1947, 79-1018.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Part 2

Anticipation of Revenue

17-1-201. Issuance of notes in anticipation of revenue. (1) The board of examiners, upon recommendation of the department of administration, may issue notes in anticipation of the receipt of taxes or revenues, direct or indirect, as the legal demands on the treasury during any fiscal year render it necessary.

(2) The notes issued in any fiscal year shall be for the purposes and within the amounts of appropriations made for the fiscal year and must be designated tax or revenue anticipation notes. Appropriations during any biennium are limited to projected revenue, exclusive of notes issued in anticipation of revenue.

History: En. Sec. 1, Ch. 658, L. 1979.

Cross-References
State debt, Art. VIII, sec. 8, Mont. Const.
Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.
Prohibited payments, Art. VIII, sec. 14, Mont. Const.
Board of Examiners — allocations, 2-15-1007.

17-1-202. Limitation on amount of notes. No more than $50 million of notes issued under 17-1-201 may be outstanding at any time.

History: En. Sec. 2, Ch. 658, L. 1979; amd. Sec. 1, Ch. 577, L. 1981.

Compiler's Comments
1981 Amendment: Substituted the first sentence of the section for "The total amount of notes issued under 17-1-201 may not exceed an aggregate of $100 million"; and deleted subsection (2) which provided that no notes may be issued after June 30, 1981.

17-1-203. Interest rate. The notes shall bear interest at such rate as, in the judgment of the board of examiners, may be sufficient or necessary to effect the issuance and sale of the notes in the manner determined by the board of examiners upon recommendation of the department of administration.

History: En. Sec. 3, Ch. 658, L. 1979.

Cross-References
Legal interest, 31-1-106.

17-1-204. Payment — pledge of taxes and revenue. (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) The full faith and credit and taxing power of the state shall be pledged for the payment of all notes issued under this part.

History: En. Sec. 4, Ch. 658, L. 1979; amd. Sec. 2, Ch. 577, L. 1981.

Compiler's Comments
1981 Amendment: Substituted (2) for "An amount of taxes and revenues as will be sufficient to pay the amount borrowed, with interest, is pledged to the payment of the notes."

Cross-References
State debt, Art. VIII, sec. 8, Mont. Const.

CHAPTER 2

ACCOUNTING

Part 1 — Treasury Funds and Accounts

Section

17-2-101. Title and purpose.
17-2-102. Fund structure.
17-2-103. Previous definitions of funds — future provisions for segregation of moneys.
17-2-104. Additional accounts authorized.
17-2-105. Maintenance of fund and account records and interfund loans.
17-2-106. Creation and abolition of new accounts.
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17-2-109. Department access to records.
17-2-110. Fiscal year and financial reports.

Part 2 — Special Accounts

17-2-201. Contingent revolving accounts — when established.

17-2-202. Retention of agency moneys.
17-2-203. Repealed.

Chapter Cross-References

Contribution account in agency fund, 19-1-601 through 19-1-604.

Funds created for water conservation, 85-1-321.

Part 1

Treasury Funds and Accounts

Part Cross-References

Treasurer to withhold payment, 2-2-206.

Disposition of license and other tax proceeds within treasury funds, 15-1-501.

Warrants to Fire Department Relief Association, 19-11-514.

Ex officio treasurer of Unemployment Compensation Account, 39-51-402.

Treasurer for hail insurance, 80-2-232.

17-2-101. Title and purpose. Sections 17-2-101 through 17-2-107 may be cited as the "Treasury Fund Structure Act". The purpose of these sections is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect the state's revenues, expenditures, expenses, and financial position in accordance with generally accepted accounting principles.

History: **En. Sec. 1, Ch. 147, L. 1963; R.C.M. 1947, 79-409; amd. Sec. 1, Ch. 540, L. 1979; amd. Sec. 1, Ch. 28, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "the state's revenues, expenditures, expenses, and financial position in accordance with generally accepted accounting principles" for "governmental costs and revenues" at the end of the section.

17-2-102. Fund structure. (1) There are in the state treasury only the following fund categories and types:

(a) governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type shall be subdivided for operational purposes into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(C) The other special revenue funds consist of money deposited in the state treasury from private sources, including trust income, that is used for the operation of state government and money used to defray reimbursable expenditures.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the university funds, which include:

(i) the university current fund, which accounts for moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the university current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the university current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the university current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the university student loan fund, which accounts for moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

(iii) the university endowment fund, which accounts for moneys deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the university annuity and life income fund, which accounts for moneys deposited in the state treasury by the Montana university system under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the university plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the university agency fund, which accounts for moneys deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) of this section, there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the university funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the university funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section.

History: En. Sec. 2, Ch. 147, L. 1963; amd. Sec. 1, Ch. 321, L. 1973; amd. Sec. 1, Ch. 438, L. 1977; R.C.M. 1947, 79-410; amd. Sec. 2, Ch. 540, L. 1979; amd. Sec. 2, Ch. 28, L. 1981; amd. Sec. 9, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (1), introductory clause, changed "funds" to "fund categories and types"; in (1)(a), substituted "fund category, which includes" for "funds, which include"; in (1)(a)(ii), near beginning, substituted "special revenue fund type, which accounts" for "special revenue funds, which account" and inserted second sentence and (1)(a)(ii)(A) through (1)(a)(ii)(C); in (1)(a)(iii), substituted "capital projects fund type, which account" for "capital projects funds, which account"; in (1)(a)(iv), substituted "debt service fund type, which accounts" for "debt service funds, which account"; at beginning of (1)(b), substituted "proprietary fund category, which includes" for "proprietary funds, which include"; at beginning of (1)(b)(i), substituted "enterprise fund type, which accounts" for "enterprise funds, which account"; in (1)(b)(ii), substituted "internal service fund type, which accounts" for "internal service funds, which account"; near beginning of (1)(c), substituted "fiduciary fund category, which includes trust and agency fund types" for "fiduciary funds, which include trust and legacy funds"; and in (1)(c)(i) through (1)(c)(iv), changed "funds" to "fund type".

1981 Amendments — Sunset Provision Removed — Effective Date: Section 2, Ch. 438, L. 1977, read: "The additional funds estabished by subsections (10) through (15) of 79-410 [17-2-102] are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure." The title to Ch. 28, L. 1981 (HB 341), read in part: "An act to rename and define treasury funds to be in accordance with current authoritative literature and generally accepted accounting principles; removing the sunset provision on the university funds; ... and providing effective dates." Chapter 28, L. 1981, made no amendments to Sec. 2, Ch. 438, L. 1977, which terminated subsections (10) through (15) of this section. However, the Code Commissioner did not remove those subsections because the testimony of witnesses on HB 341 as well as the title to HB 341 indicates an apparent intent to remove the sunset provisions.

Section 2, Ch. 28, L. 1981, rewrote subsection (1) with all new language in (a), (b), and (c) and minor changes in (d); added subsection (2).

Section 6, Ch. 28, L. 1981, provided that the amendments to this section will be effective July 1, 1983.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Insurance on state buildings — use of proceeds — building replacement, 2-17-105.

Disposition of tax proceeds, Title 15, ch. 1, part 5.

Revenue to be paid to state treasurer, 16-1-306.

Fiscal officer for receipt of federal grants, 17-3-106.

Bond issues, Title 17, ch. 5.

Appropriation and disbursement of money from the treasury, 17-8-101.

17-2-103. Previous definitions of funds — future provisions for segregation of moneys. (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds which are inconsistent with the definitions found in this part.

(2) Any laws enacted in the future or any contracts entered into in the future in pursuance of law that require the segregation of moneys in the state treasury by means of a separate treasury fund shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by 17-2-102.

History: **Ap.p. Sec. 3, Ch. 147, L. 1963; amd. Sec. 2, Ch. 438, L. 1977; Sec. 79-411, R.C.M. 1947; Ap.p. Sec. 2, Ch. 438, L. 1977; R.C.M. 1947, 79-411; amd. Sec. 3, Ch. 28, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted subsection (3) which had made the university funds now in 17-2-102(1)(d) effective only until June 30, 1981, resulting in making those funds a permanent part of the treasury fund structure.

Cross-References

Deposit and use of proceeds, 17-5-506.

17-2-104. Additional accounts authorized. The enumeration of treasury funds in 17-2-102 does not prohibit the state treasurer from establishing and maintaining:

(1) clearance or suspense accounts for the purpose of paying refunds, for the purpose of grouping payments from different funds or accounts prior to disbursement, or for the purpose of conveniently processing receipts before crediting the proper fund;

(2) investment funds authorized under the "Unified Investment Plan".

History: **En. Sec. 4, Ch. 147, L. 1963; R.C.M. 1947, 79-412.**

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Investments, Title 17, ch. 6, part 2.

17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in such a manner as to reflect the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual funds within the debt service, agency, capital projects, and trust fund types in such a manner as to reflect the total cash and invested balance of each fund. When necessary to meet federal or other requirements that moneys be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within any fund type listed in 17-2-102.

(2) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest, and no fund shall be so impaired that all proper demands thereon cannot be met.

History: (1)En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-414, R.C.M. 1947; (2)En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-415, R.C.M. 1947; R.C.M. 1947, 79-414(1), 79-415(4); amd. Sec. 10, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In second sentence of (1), after "individual", substituted "funds within the debt service, agency, capital projects, and trust fund types" for "subfunds within the sinking fund, bond proceeds and insurance clearance fund, and trust and legacy fund" and at end of sentence changed "subfund" to "fund"; and in last sentence of (1) after "establish", substituted "accounts, funds, or subfunds within any fund type" for "subfunds within any fund".

17-2-106. Creation and abolition of new accounts. (1) Moneys deposited in each fund except the general fund shall be segregated by the department of administration by specific accounts based on source, function, or department. When moneys deposited in the state treasury cannot logically be credited to an existing account or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the department of administration, in its discretion, may create new accounts consistent with the definitions in 17-2-102. However, the department of administration shall create as few new accounts as practicable.

(2) The department of administration shall periodically examine all accounts and shall abolish or consolidate inactive or unnecessary accounts.

(3) When moneys have been appropriated from several sources for the operation of a state agency, the department of administration may establish an account to receive, hold, and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

History: (1), (2)En. Sec. 5, Ch. 147, L. 1963; amd. Sec. 27, Ch. 326, L. 1974; Sec. 79-413, R.C.M. 1947; (3)En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-414, R.C.M. 1947; R.C.M. 1947, 79-413, 79-414(4).

17-2-107. Accurate accounting records and interaccount loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred and provided the loan is recorded in the state accounting records. The loan must be repaid before the end of the fiscal year unless it is extended under the criteria of subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds; or

(iii) receipts due to the loan fund.

(4) These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved. Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(5) Any loan from the general fund or the university current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investment's short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(6) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102.

History: **En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-414(2), (3); amd. Sec. 1, Ch. 626, L. 1979; amd. Sec. 4, Ch. 28, L. 1981; amd. Sec. 1, Ch. 517, L. 1983.**

Compiler's Comments

1983 Amendment: In (2), inserted second sentence, and at end of third sentence after "met" inserted "even if the loan is extended"; and inserted (3) and (4).

Applicability and Effective Dates: Section 2, Ch. 517, L. 1983, provided: "This act applies only to loans made and approved on or after March 1, 1983. Loans made and approved by the department of administration before March 1, 1983, shall be repaid according to the repayment plan previously approved."

Section 3, Ch. 517, L. 1983, provided: "This act is effective July 1, 1983."

1981 Amendment: Changed internal references to subsections of 17-2-102 to be consistent with amendments in sec. 2, Ch. 28, L. 1981.

17-2-108. Expenditure of nongeneral fund money first. The department shall apply expenditures against nongeneral fund money wherever possible before using the general fund appropriations.

History: **En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; R.C.M. 1947, 82-109(2).**

17-2-109. Department access to records. (1) All officers, employees, and other persons connected with the fiscal affairs of any state office, agency, or institution must afford all reasonable facilities for the examination of accounts and investigations provided for and must make reports, returns, and exhibits relating to such fiscal matters to the department in a form that the department shall prescribe.

(2) If an officer or employee of the state or any agency refuses or neglects to comply with subsection (1) of this section, the salary of that officer or employee shall, on request of the department to the proper official, be withheld until that officer or employee complies with subsection (1) and the department certifies approval to the disbursing officer.

History: **En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; R.C.M. 1947, 82-110(part).**

Cross-References

Department of Administration's powers and duties, 2-6-203.

17-2-110. Fiscal year and financial reports. (1) The fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year.

(2) At the close of each fiscal year the fiscal records of each state office, department, bureau, commission, institution, university unit, and agency (hereinafter collectively referred to as "state agency") shall be closed as of the end of the fiscal year. Each state agency shall prepare such financial statements and reconciliations for the fiscal year as the department of administration may prescribe. These financial reports are to be completed and distributed not more than 31 days following the close of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity therefor.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency so that the reports can be effectively utilized by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration will be available for other individuals and organizations interested in the financial affairs of the state of Montana.

History: **En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M., 1935; amd. Sec. 1, Ch. 121, L. 1953; amd.**

Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; R.C.M. 1947, 59-701(part).

Cross-References
Statutes — effective date, 1-2-201.
Powers and duties, 5-13-304.
Information from state agencies, 5-13-309.

Part 2

Special Accounts

17-2-201. Contingent revolving accounts — when established. (1) The department of administration may authorize the establishment and maintenance at any and all of the state institutions or in any of the departments, boards, or commissions of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, such as payment of minor invoices, invoices for which discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the department of administration.

(2) Each and every state institution granted a contingent revolving account shall report to the department of administration monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The department of administration may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R.C.M. 1921; re-en. Sec. 195, R.C.M. 1935; amd. Sec. 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-602.

17-2-202. Retention of agency moneys. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, moneys that would otherwise be deposited in the agency fund as defined in 17-2-102. The department of administration may cancel this permission and require the deposit of the moneys with the state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate depositories for the moneys and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1931; re-en. Sec. 196, R.C.M. 1935; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971; amd. Sec. 28, Ch. 326, L. 1974; amd. Sec. 7, Ch. 61, L. 1977; R.C.M. 1947, 79-603.

Cross-References
State Treasurer as treasurer of state agencies — deposits of money, 17-6-105.

17-2-203. Repealed. Sec. 7, Ch. 540, L. 1979.

History: En. Sec. 6, Ch. 112, L. 1921; re-en. Sec. 197, R.C.M. 1921; re-en. Sec. 197, R.C.M. 1935; R.C.M. 1947, 79-604.

CHAPTER 3

FEDERAL REVENUES AND ENDOWMENTS

Part 1 — Federal Assistance Management

Section

17-3-101. Purpose.
17-3-102. Definitions.
17-3-103. Repealed.
17-3-104. Applications for funds by state agencies — approval.
17-3-105. Governor authorized to accept funds — designation of state agency.
17-3-106. Fiscal officer for receipt of federal grants.
17-3-107. Federal funds for welfare of Indians.
17-3-108. Expenditure — approved budget amendment.
17-3-109. Reports by participating state agencies.
17-3-110. Statewide cost allocation plan.
17-3-111. Indirect cost rates.

Part 2 — Distribution of Federal Return on State Resources

17-3-201. Deposit of gas and oil royalties from federal government in highway account.
17-3-202 through 17-3-210 reserved.
17-3-211. Forest reserve money.
17-3-212. Apportionment of forest reserve funds among counties.
17-3-213. Allocation to general road fund and countywide school levies.
17-3-214. Correction of errors in apportionment.
17-3-215 through 17-3-220 reserved.
17-3-221. State treasurer to be custodian of moneys received under Taylor Grazing Act.
17-3-222. Apportionment of moneys to counties.
17-3-223 through 17-3-230 reserved.
17-3-231. Flood Control Act — distribution of revenues to counties.
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17-3-302. Requests for sums in lieu of taxes and agreements to perform services.
17-3-303. Basis for amount of payment.
17-3-304. Duplicate of agreement — filing — receipt for tax.
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17-3-1002. Persons who may make gifts to state institutions.
17-3-1003. Support of state institutions.
17-3-1004. Disbursement of funds.

Chapter Cross-References

Receipt of federal revenues for:

Local public works programs, 7-13-142, 7-13-143.

School food service, 20-10-201.

State Library Commission, 22-1-103.

Law Enforcement Academy, 44-10-202.

Application for federal revenues for hospital construction, 50-5-404, 50-5-406.

Department of Health and Environmental Sciences, 50-17-103.

Department of Social and Rehabilitation Services, 53-20-203.

Department of Commerce, 67-1-301.

Aid to airports, 67-10-405.

Municipal and regional airport authorities, 67-11-305.

Flood control and water conservancy districts, 76-5-1110.
Open-space land, 76-6-109.
Department of Agriculture, 80-2-102.
Board of Land Commissioners, 82-4-424.

Part 1

Federal Assistance Management

17-3-101. Purpose. The purpose of this part is to provide more complete information regarding federal assistance programs to the governor, state agencies, and the legislature and coordinate federally assisted programs with other state programs.

History: **En. 79-2702 by Sec. 2, Ch. 259, L. 1975; R.C.M. 1947, 79-2702.**

17-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Application" means a written request to a federal agency for federal assistance program funds.

(2) "Federal assistance programs" means any financial assistance made to a state agency by an agency of the United States government, whether a grant, loan, gift, contract or in any other form.

(3) "Grantee agency" means any agency of state government receiving federal funds.

(4) "Indirect costs" means costs which benefit more than one agency or program and are not readily assignable to the agency or program specifically benefiting.

(5) "Service agency" means state agencies which provide goods, facilities, and services to a grantee agency.

(6) "State agency" means any agency of state government eligible to apply for and receive federal funds.

History: **(1), (2), (5)En. 79-2703 by Sec. 3, Ch. 259, L. 1975; Sec. 79-2703, R.C.M. 1947; (3), (4), (6)En. 79-1020 by Sec. 1, Ch. 223, L. 1975; Sec. 79-1020, R.C.M. 1947; R.C.M. 1947, 79-1020, 79-2703.**

17-3-103. Repealed. Sec. 1, Ch. 176, L. 1979.

History: **En. 79-2704 by Sec. 4, Ch. 259, L. 1975; R.C.M. 1947, 79-2704.**

17-3-104. Applications for funds by state agencies — approval. All applications made by state agencies for federal assistance program funds, with the exception of university system research grants, must be approved by the governor prior to their submission to the federal authorities. The form and procedure for submission for the governor's approval shall be determined by the budget director. Applications by constitutionally elected officials shall be subject only to review and comment by the governor.

History: **En. 79-2706 by Sec. 6, Ch. 259, L. 1975; R.C.M. 1947, 79-2706.**

Cross-References

Federal grants and cooperative research studies, 20-25-231.

17-3-105. Governor authorized to accept funds — designation of state agency. (1) The governor is authorized to accept on behalf of the state any federal assistance funds made available by act of congress for programs that are consistent with the needs and goals of the state and its citizens and that are not prohibited by the provisions of this part or other applicable law.

(2) The governor shall designate, unless otherwise specified by state or federal law or regulation, the state agency to administer the accepted federal assistance program.

History: **En. 79-2705 by Sec. 5, Ch. 259, L. 1975; R.C.M. 1947, 79-2705.**

Cross-References

Federal aid, 2-15-137.

17-3-106. Fiscal officer for receipt of federal grants. The state treasurer is hereby designated as the fiscal officer of the state to receive from the United States government or any of its agencies any and all funds which may be made available as a grant or grants to the state of Montana under any act of congress, or otherwise, for any purpose or use whatsoever. The state treasurer is hereby authorized, empowered, and directed, upon receipt of any such fund or funds, to deposit the same in the proper fund in the state treasury.

History: **En. Sec. 1, Ch. 119, L. 1949; R.C.M. 1947, 79-210.**

Cross-References

Fund structure, 17-2-102.

17-3-107. Federal funds for welfare of Indians. If and whenever the congress of the United States shall authorize the administration of federal appropriations for the welfare of the Indians of Montana through the agency of public departments and bureaus of this state, full power and authority is conferred upon such state agencies to administer the expenditure of such federal appropriations for the welfare of such Indians within the scope of the powers conferred upon such departments by law.

History: **En. Sec. 1, Ch. 65, L. 1927; re-en. Sec. 5668.14, R.C.M. 1935; R.C.M. 1947, 79-1601.**

17-3-108. Expenditure — approved budget amendment. Approval of a state agency application under 17-3-104 shall not constitute authority to expend any federal assistance program funds subsequently granted. Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment.

History: **En. 79-2707 by Sec. 7, Ch. 259, L. 1975; amd. Sec. 9, Ch. 61, L. 1977; R.C.M. 1947, 79-2707.**

17-3-109. Reports by participating state agencies. Any state agency that participates in any federal assistance program shall make such reports regarding it as the budget director may require.

History: **En. 79-2708 by Sec. 8, Ch. 259, L. 1975; R.C.M. 1947, 79-2708.**

Cross-References

Inquiries and investigations by budget director, 17-7-113.

17-3-110. Statewide cost allocation plan. The director of the department of administration shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.

History: **En. 79-1021 by Sec. 2, Ch. 223, L. 1975; R.C.M. 1947, 79-1021; amd. Sec. 1, Ch. 579, L. 1983.**

Compiler's Comments

1983 Amendment: At beginning of section changed "The budget director" to "The director of the department of administration".

17-3-111. Indirect cost rates. Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

History: En. 79-1022 by Sec. 3, Ch. 223, L. 1975; R.C.M. 1947, 79-1022.

Part 2

Distribution of Federal Return on State Resources

Part Cross-References

School food service, 20-10-201.

Aid to highways, 60-3-101.

Flood control and water conservancy districts, 76-5-1110.

17-3-201. Deposit of gas and oil royalties from federal government in highway account. For each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, the state treasurer shall pay 37 ½% of the moneys received from the treasurer of the United States as the state's share of gas, oil, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended, to the highway reconstruction trust fund account in the state special revenue fund.

History: En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977; R.C.M. 1947, 79-211; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 541, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 541, at beginning, substituted "For each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993" for "It shall be the duty of"; and near end changed "state highway account" to "highway reconstruction trust fund account".

Effective Date: Section 7, Ch. 541, L. 1983, provided: "Sections 1 through 5 [60-3-216 through 60-3-218 and 1983 amendments to 15-35-108 and 17-3-201] are effective July 1, 1983, and terminate July 1, 1993."

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Definition of and revenue for state equalization aid, 20-9-343.

17-3-202 through 17-3-210 reserved.

17-3-211. Forest reserve money. The state treasurer, for the purpose of carrying out the provisions of an act of congress of May 23, 1908, 35 United States Statutes at Large, p. 260, and all acts subsequent thereto, shall divide and distribute all forest reserve moneys received by the state thereunder to and among the several counties entitled thereto and pay the same to the several county treasurers of such counties within 30 days after receiving same, as directed by the state auditor.

History: En. Sec. 1, Ch. 26, L. 1915; re-en. Sec. 175, R.C.M. 1921; re-en. Sec. 175, R.C.M. 1935; R.C.M. 1947, 79-203.

17-3-212. Apportionment of forest reserve funds among counties. The state auditor shall apportion said forest reserve funds between the several counties as follows: all funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the state treasurer shall pay the several amounts so apportioned to the respective counties.

History: En. Sec. 2, Ch. 26, L. 1915; re-en. Sec. 176, R.C.M. 1921; re-en. Sec. 176, R.C.M. 1935; R.C.M. 1947, 79-204.

Cross-References

Appropriation of state and federal money by county, 7-6-2218.

17-3-213. Allocation to general road fund and countywide school levies. (1) The forest reserve funds so apportioned to each county shall be apportioned by the county treasurer in each county between the several funds as follows:

(a) to the general road fund, 66 ⅔ % of the total amount received;

(b) to the following countywide school levies, 33 ⅓ % of the total sum received:

(i) the annual basic tax levy for elementary schools provided for in 20-9-331;

(ii) the annual special tax for high schools provided for in 20-9-333;

(iii) the high school transportation fund provided for in 20-10-143;

(iv) the elementary teacher retirement and social security fund provided for in 20-9-501;

(v) the high school teacher retirement and social security fund provided for in 20-9-501.

(2) The apportionment of money to the funds provided for under subsection (1)(b) shall be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under this section is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (1)(b).

(3) In counties wherein special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 ⅔ % of the total amount received for the general road fund to such special road district or districts within the county based upon the percentage that the total area of such road district bears to the total area of the entire county.

History: En. Sec. 3, Ch. 26, L. 1915; re-en. Sec. 177, R.C.M. 1921; amd. Sec. 1, Ch. 66, L. 1931; re-en. Sec. 177, R.C.M. 1935; R.C.M. 1947, 79-205; amd. Sec. 1, Ch. 413, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(b), changed "common school fund" to "following countywide school levies" and inserted (1)(b)(i) through (1)(b)(v); and inserted (2).

Cross-References

Basic county tax and other revenues for county equalization of elementary district foundation program, 20-9-331.

17-3-214. Correction of errors in apportionment. In the event of any error or errors made in the apportionment or distribution of said forest reserve funds, such error or errors shall be corrected by the state auditor and state treasurer, equalizing future payments to the several counties so that the total proportionate sum received by each county shall be as fixed in 17-3-212.

History: En. Sec. 4, Ch. 26, L. 1915; re-en. Sec. 178, R.C.M. 1921; re-en. Sec. 178, R.C.M. 1935; R.C.M. 1947, 79-206.

17-3-215 through 17-3-220 reserved.

17-3-221. State treasurer to be custodian of moneys received under Taylor Grazing Act. The state treasurer shall be the custodian of all moneys that the treasurer of the United States may transfer to the state of Montana under the terms of section 10 of the Taylor Grazing Act approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year to the state where collected; to be expended as the legislature may prescribe.

History: En. Sec. 1, Ch. 146, L. 1935; re-en. Sec. 191.1, R.C.M. 1935; R.C.M. 1947, 79-701.

17-3-222. Apportionment of moneys to counties. It shall be the duty of the state treasurer to properly apportion and allocate these moneys to the county treasurers, who will allocate and pay all such moneys as follows: 50% to the county general fund and 50% to the common school fund of the county.

History: En. Sec. 2, Ch. 146, L. 1935; re-en. Sec. 191.2, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1937; amd. Sec. 1, Ch. 102, L. 1939; amd. Sec. 1, Ch. 96, L. 1949; R.C.M. 1947, 79-702.

Cross-References

Basic county tax and other revenues for county equalization of elementary district foundation program, 20-9-331.

17-3-223 through 17-3-230 reserved.

17-3-231. Flood Control Act — distribution of revenues to counties. All moneys received or hereafter to be received by the state from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under 33 U.S.C.A., section 701-c-3, shall be distributed by the state to the county treasurers of the counties of the state wherein the flood control land is situated.

History: En. Sec. 1, Ch. 156, L. 1959; R.C.M. 1947, 79-2101.

Cross-References

Floodplain and floodway management, Title 76, ch. 5.

17-3-232. Deposit and expenditure of funds by counties. All moneys received or to be received by the county treasurers of the counties of the state wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund and shall be expended as follows: of all moneys received or to be received, 50% shall be expended for the benefit of the county common schools in the county concerned and 50% shall be expended for the benefit of the general public roads in the county concerned.

History: En. Sec. 2, Ch. 156, L. 1959; R.C.M. 1947, 79-2102.

Cross-References

City and county road funds, 7-14-2512.

Basic county tax and other revenues for county equalization of elementary district foundation program, 20-9-331.

Part 3

Federal Sums in Lieu of Taxes

Part Cross-References

Rate of privilege — tax credit for federal payments in lieu of taxes, 15-24-1204.

17-3-301. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Department" shall mean the department of revenue of the state of Montana.

(3) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project.

(4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.

(5) "State" shall mean the state of Montana.

(6) "United States" shall mean the United States of America.

History: **En. Sec. 1, Ch. 58, L. 1939; amd. Sec. 203, Ch. 516, L. 1973; R.C.M. 1947, 84-5501.**

17-3-302. Requests for sums in lieu of taxes and agreements to perform services. The department is hereby authorized and empowered to make requests of the United States for and on behalf of this state for payment of such sums in lieu of taxes as the United States may agree to pay and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: **En. Sec. 2, Ch. 58, L. 1939; amd. Sec. 204, Ch. 516, L. 1973; R.C.M. 1947, 84-5502.**

17-3-303. Basis for amount of payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to the state of performing services for the benefit of the projects during the period of agreement, after taking into consideration the benefits to be derived by the state from such projects, but shall not be in excess of the taxes which would result to the state for the period if the real property of the projects within the state were taxable.

History: **En. Sec. 3, Ch. 58, L. 1939; R.C.M. 1947, 84-5503.**

17-3-304. Duplicate of agreement — filing — receipt for tax. A duplicate copy of every agreement for payment of sums in lieu of taxes shall be filed in the office of the treasurer of this state. On or before the date on which any payment of sums in lieu of taxes is due, the state treasurer shall present a bill to the United States in the name of the state in the amount of such payment. The state treasurer shall give to the United States a receipt in the name of the state for all payments of sums in lieu of taxes.

History: **En. Sec. 4, Ch. 58, L. 1939; R.C.M. 1947, 84-5504.**

17-3-305. Disposal of moneys. All payments of sums in lieu of taxes received by this state shall be deposited in funds according to the state levies.

History: **En. Sec. 5, Ch. 58, L. 1939; amd. Sec. 1, Ch. 42, L. 1947; R.C.M. 1947, 84-5505.**

Parts 4 through 9 reserved

Part 10

Endowments

Part Cross-References

Montana State University, 20-25-424.

17-3-1001. State institutions which may take by gift, bequest, or grant. (1) The state of Montana, units of the Montana university system, the Montana school for the deaf and blind, all institutions in the department of institutions, and any institutions now created or established or which may hereafter be created or established and supported in whole or in part by the state for any purpose may accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of the institutions, to any officer or board of the institutions, or to any person in trust for the institutions.

(2) In the event it is made directly to any institution or to any officer or board of any institution, the gift, donation, grant, devise, or bequest is a gift, donation, grant, devise, or bequest to the state and shall be administered and used by the state for the particular purpose for which it was given, donated, granted, bequeathed, or devised. In the event no particular purpose is mentioned in the gift, grant, devise, or bequest, then it shall be used for the general support, maintenance, or improvement of such institution by the state.

History: En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R.C.M. 1921; re-en. Sec. 6978, R.C.M. 1935; amd. Sec. 96, Ch. 199, L. 1965; R.C.M. 1947, 91-105; amd. Sec. 3, Ch. 540, L. 1979.

Cross-References

Sale of property when resolution passed after hearing — appeal procedure, 20-6-604.

Acceptance of donations, 20-15-109.

Acceptance of gifts and grants — contractual agreements, 20-31-401.

Institutions in department, 53-1-202.

Acceptance and administration of gifts and donations, 76-1-408.

Acquisition and designation of real property by public body, 76-6-106.

Acquisition of conservation easements by qualified private organizations, 76-6-204.

Acquisition and management of property, 76-15-404.

Acceptance of gifts, donations, grants, legacies, and devises to the state, 77-1-213.

17-3-1002. Persons who may make gifts to state institutions. (1) A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of 18 years and of sound mind to the state, a unit of the Montana university system, the state school for deaf and blind, an institution in the department of institutions, and any and all institutions now created or established or which may hereafter be created or established and supported, in whole or in part, by the state for any purpose. Any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state, or to any of the institutions above-named or referred to.

(2) In the event any gift, donation, grant, devise, or bequest shall be made to any such institution or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state and shall be administered and used for the state for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. In the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state.

History: En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R.C.M. 1921; re-en. Sec. 6979, R.C.M. 1935; amd. Sec. 97, Ch. 199, L. 1965; R.C.M. 1947, 91-106.

17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of such obligations or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

(2) All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall be deposited with the state treasurer of Montana for each of such institutions, to the credit of the other special revenue funds.

History: (1)En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R.C.M. 1921; re-en. Sec. 194, R.C.M. 1935; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973; Sec. 79-601, R.C.M. 1947; (2)En. Sec, 1, Ch. 120, L. 1909; re-en. Sec. 1922, R.C.M. 1921; re-en. Sec. 1922, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1961; amd. Sec. 24, Ch. 147, L. 1963; amd. Sec. 5, Ch. 286, L. 1977; Sec. 79-1401, R.C.M. 1947; R.C.M. 1947, 79-601, 79-1401; amd. Sec. 2, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "other special revenue funds" for "federal and private revenue fund".

Cross-References

Fund structure, 17-2-102.

17-3-1004. Disbursement of funds. (1) The money received by the state treasurer under the provisions of 17-3-1003 shall be paid out by him only on warrant issued by the state auditor in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the same.

(2) In the payment of claims presented by a state institution entitled to interest and income from land grants or moneys arising therefrom, no warrant shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim until interest and income moneys, insofar as they are available for the payment of the items in the claim, are exhausted.

History: (1)En. Sec. 2, Ch. 120, L. 1909; re-en. Sec. 1923, R.C.M. 1921; re-en. Sec. 1923, R.C.M. 1935; amd. Sec. 2, Ch. 89, L. 1961; Sec. 79-1402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1909; re-en. Sec. 1924, R.C.M. 1921; re-en. Sec. 1924, R.C.M. 1935; amd. Sec. 3, Ch. 89, L. 1961; amd. Sec. 25, Ch. 147, L. 1963; Sec. 79-1403, R.C.M. 1947; R.C.M. 1947, 79-1402, 79-1403.

CHAPTER 4

DEBT COLLECTION

Part 1 — Debt Collection Service

Section

17-4-101. Definitions.
17-4-102. Accounts of persons indebted to state.
17-4-103. Collection of claims by state auditor — department assistance.
17-4-104. Circumstances when department must assist.
17-4-105. Authority to collect debt — offsets.

17-4-106. Agency owed debt to receive all moneys collected.
17-4-107. Write-off procedures.
17-4-108. Circumstances under which previously written-off debt may be collected.
17-4-109. Debts not collectible under this part.
17-4-110. State agencies to adopt rules.
17-4-111. Right of hearing to aggrieved persons.

Chapter Cross-References

Counterclaim against the state, Rule 13(d), M.R.Civ.P. (see Title 25, ch. 20).

Debtor and creditor relationships, Title 31, ch. 2.

Part 1

Debt Collection Service

17-4-101. Definitions. In this part the following definitions apply:

(1) The term "state agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) The word "department" means the department of revenue.

History: En. 84-7102 by Sec. 2, Ch. 118, L. 1974; R.C.M. 1947, 84-7102.

17-4-102. Accounts of persons indebted to state. (1) In his discretion it is the duty of the state auditor to:

(a) examine and settle the accounts of persons indebted to the state and certify the amount to the treasurer and, upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith;

(b) require any person presenting an account for settlement to be sworn before him and to answer, orally or in writing, as to any facts relating to it.

(2) The certificate mentioned in subsection (1)(a) must show by whom the payment is to be made, the amount thereof, and the fund into which it is to be paid and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: (1)En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-101, R.C.M. 1947; (2)En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R.C.M. 1921; Cal. Pol. C. Sec. 434; re-en. Sec. 152, R.C.M. 1935; amd. Sec. 2, Ch. 94, L. 1969; Sec. 79-102, R.C.M. 1947; R.C.M. 1947, 79-101(7), (8), 79-102.

17-4-103. Collection of claims by state auditor — department assistance. (1) In his discretion it is the duty of the state auditor to examine the collection of moneys due the state and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue and against persons who by any means have become possessed of public money or property and failed to pay over or deliver the same and against debtors of the state, of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

(2) Whenever any person has received moneys or has money or other personal property which belongs to the state by escheat or otherwise or has been

entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the state auditor within the time prescribed by law or, when no particular time is specified, fails to render such account and make settlement or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state auditor, within 20 days after such requisition, the state auditor must state an account with such person, charging 25% damages and interest at the rate of 10% per annum from the time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the state auditor cannot for want of information state an account, he may in any action brought by him aver that fact and allege generally the amount of money or other property which is due to or which belongs to the state.

(3) The department may assist in the collection of any delinquent account owing to any state agency.

(4) The department is hereby authorized to provide a collection service for the general purpose of centralizing the collection of all debts owing to the state.

History: (1)En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-101, R.C.M. 1947; (2)En. Sec. 424, Pol. C. 1895; re-en. Sec. 174, Rev. C. 1907; re-en. Sec. 155, R.C.M. 1921; Cal. Pol. C. Sec. 437; re-en. Sec. 155, R.C.M. 1935; Sec. 79-105, R.C.M. 1947; (3)En. 84-7103 by Sec. 3, Ch. 118, L. 1974; Sec. 84-7103, R.C.M. 1947; (4)En. 84-7101 by Sec. 1, Ch. 118, L. 1974; Sec. 84-7101, R.C.M. 1947; R.C.M. 1947, 79-101(12), 79-105, 84-7101, 84-7103.

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Reporting delinquent taxes, Title 15, ch. 16, part 3.

Liens and limitations, Title 15, ch. 16, part 4.

Collection by suit, Title 15, ch. 16, part 5.

Actions to recover statutory penalty or forfeiture, 25-2-104.

Other actions, 25-2-108.

Legal interest, 31-1-106.

17-4-104. Circumstances when department must assist. Subject to and in accordance with rules adopted by the department, the department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the satisfaction of the department:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the department the amount of the money, interest, and penalties, as accurately as can be determined. The department may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt unless examination is specifically prohibited by law.

(3) If the department finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, the

department shall direct the agency to write off the debt on its accounts and transfer the debt to the department.

History: En. 84-7104 by Sec. 4, Ch. 118, L. 1974; amd. Sec. 1, Ch. 248, L. 1977; R.C.M. 1947, 84-7104.

17-4-105. Authority to collect debt — offsets. (1) Once a debt of a state agency has been transferred to the department, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt transferred by the state agency to the department provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing. The department may contract with commercial collection agencies for recovery of debts owed the state by debtors residing outside the boundaries of the state.

(2) In his discretion it is the duty of the state auditor to offset any amount due a state agency from a person or entity against any amount owing such person or entity by any state agency. The state auditor may deduct from the claim and draw his warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine.

(3) If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.

History: (1)En. 84-7105 by Sec. 5, Ch. 118, L. 1974; amd. Sec. 2, Ch. 248, L. 1977; Sec. 84-7105, R.C.M. 1947; (2), (3)En. Sec. 420, Pol. C. 1895; re-en Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.; Sec. 79-101, R.C.M. 1947; R.C.M. 1947, 79-101(13), 84-7105.

Cross-References

Notice, 2-4-601.

Credits and refunds — period of limitations, 15-30-149.

Motor vehicle regulation in university system — fees and fines, 20-25-312.

17-4-106. Agency owed debt to receive all moneys collected. All moneys collected by the department on debts transferred to it by the various state agencies shall be deposited to the account or fund of the agency to which the debt was originally owing.

History: En. 84-7106 by Sec. 6, Ch. 118, L. 1974; amd. Sec. 3, Ch. 248, L. 1977; R.C.M. 1947, 84-7106.

17-4-107. Write-off procedures. (1) The department of revenue may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies which have been transferred to the department of revenue pursuant to 17-4-104 and which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with subsection (2).

(2) The department of administration may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. Such procedures shall include the reporting of any canceling and writing off of accounts receivable to the next session of the legislature.

History: **(1)En. 84-7107 by Sec. 7, Ch. 118, L. 1974; amd. Sec. 4, Ch. 248, L. 1977; Sec. 84-7107, R.C.M. 1947; (2)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50. Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 82-110(3), 84-7107.**

17-4-108. Circumstances under which previously written-off debt may be collected. If a debt previously written off under 17-4-107(1) subsequently becomes collectible, the department shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106.

History: **En. 84-7108 by Sec. 8, Ch. 118, L. 1974; R.C.M. 1947, 84-7108.**

17-4-109. Debts not collectible under this part. This part does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

History: **En. 84-7109 by Sec. 9, Ch. 118, L. 1974; R.C.M. 1947, 84-7109.**

17-4-110. State agencies to adopt rules. All state agencies shall adopt rules and forms to participate in and carry out the provisions of this part.

History: **En. 84-7110 by Sec. 10, Ch. 118, L. 1974; R.C.M. 1947, 84-7110.**

17-4-111. Right of hearing to aggrieved persons. Any person aggrieved from a decision or an action taken under this part shall have the right to present his grievances in the same manner as provided by law for taxpayer appeals.

History: **En. 84-7111 by Sec. 11, Ch. 118, L. 1974; R.C.M. 1947, 84-7111.**

Cross-References

Appeal procedure, Title 15, ch. 2, part 3.

CHAPTER 5

PUBLIC BOND ISSUES

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Section

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17-5-103. Rate of interest on special assessments determined by governing bodies — limitations.
17-5-104. Effect of revisions on bonds previously authorized.
17-5-105. Redemption of bonds — optional method.

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Chapter Cross-References

Transfer of rights and duties under executive reorganization, 2-15-135.

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County debt limits, 7-7-2101, 7-7-2102.

County finance — bonds and warrants, Title 7, ch. 7, part 22.

Municipal bonds and indebtedness, Title 7, ch. 7, part 42.

Municipal Revenue Bond Act of 1939, Title 7, ch. 7, part 44.

Rural improvement district bonds, 7-12-2169 through 7-12-2173.

Special improvement district bonds, Title 7, ch. 12, part 42.

County water and sewer district bonds, 7-13-2321, 7-13-2322.

Television districts, 7-13-2510, 7-13-2511.

Bonds of city, 7-13-4203 through 7-13-4206.

Urban transportation districts, 7-14-235, 7-14-236.

County road and bridge bonds, Title 7, ch. 14, part 25.

Local improvement districts, 7-14-2702, 7-14-2745.

Municipality bond issue — bus lines, 7-14-4401, 7-14-4402.

Municipality bond issue — parking areas, 7-14-4501, 7-14-4502.

Parking Commission, Title 7, ch. 14, part 46.

Urban renewal, Title 7, ch. 15, parts 42, 43.

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School district and county school bonds, Title 20, ch. 9, part 4.

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Bonds of irrigation districts, Title 85, ch. 7, part 20.

Bonds of drainage districts, 85-8-501, 85-8-504, 85-8-702.

Bonds of conservancy districts, 85-9-621.

Renewable resource development bonds, 90-2-121, 90-2-122.

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County, city bonds of industrial development project, 90-5-103, 90-5-104.

Part 1

Rates of Interest

17-5-101. Definitions. The following terms as used in this part have the following meanings:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state but shall not include the state of Montana, the board of examiners, the division of water resources of the department of natural resources and conservation, the state highway commission, or any other board, agency, or commission of the state.

(3) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

History: En. Sec. 1, Ch. 234, L. 1971; R.C.M. 1947, 79-2601.

17-5-102. Rate of interest on bonds to be determined by governing bodies. (1) Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine.

(2) The provisions of this section establish the rate of interest on bonds of political subdivisions as defined in 17-5-101 and expressly supersede any other statutory limitation on the rate of interest to be borne by bonds of political subdivisions.

History: En. Sec. 2, Ch. 234, L. 1971; R.C.M. 1947, 79-2602; amd. Sec. 10, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Compiler's Comments

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Deleted "except that no such rate shall exceed 7% except revenue bonds issued under the terms of Title 7, chapter 7, parts 44 and 45, Title 7, chapter 13, part 43, and 90-5-101 through 90-5-113, which rate shall not exceed 9%" at the end of (1); added subsection (2).

17-5-103. Rate of interest on special assessments determined by governing bodies — limitations. All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed the greater of 7% per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

History: En. Sec. 3, Ch. 234, L. 1971; R.C.M. 1947, 79-2603.

17-5-104. Effect of revisions on bonds previously authorized. If prior to April 23, 1981, a political subdivision was authorized to issue bonds pursuant to a law that limited the rate of interest on the bonds, it may issue all of the bonds so authorized under the provisions of 17-5-102 even if the rate of interest on the bonds exceeds the maximum rate permissible prior to April 23, 1981.

History: En. Sec. 17, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Compiler's Comments

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

17-5-105. Redemption of bonds — optional method. Between April 23, 1981, and July 1, 1983, a governing body in connection with the issuance of bonds may, at its option, provide that such bonds shall be redeemable at such time or times and upon such terms and conditions as the governing body shall deem to be in the best interest of the public, notwithstanding any statutory provision to the contrary.

History: En. Sec. 18, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Compiler's Comments

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

Part 2

Bond Validating Act

17-5-201. Short title. This part may be cited as the "Bond Validating Act".

History: En. 79-2001 by Sec. 1, Ch. 265, L. 1975; amd. Sec. 1, Ch. 564, L. 1977; R.C.M. 1947, 79-2001.

17-5-202. Definitions. The following terms, wherever used or referred to in this part, have the following meanings:

(1) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents of higher education, the board of examiners, the board of natural resources and conservation, the state highway commission, or any other governmental agency of this state.

(2) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund.

History: En. 79-2002 by Sec. 2, Ch. 265, L. 1975; amd. Sec. 1, Ch. 486, L. 1975; amd. Sec. 2, Ch. 564, L. 1977; R.C.M. 1947, 79-2002; amd. Sec. 1, Ch. 282, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or any commission, authority, or agency of a political or governmental subdivision" after "subdivision of the state" in (1).

17-5-203. Validation. All bonds issued by any public body and all proceedings taken for the authorization and issuance of such bonds; for the levy, establishment, pledge, and appropriation of taxes, special assessments and other charges, and revenues to pay such bonds; and for the sale, exchange, execution, and delivery thereof, prior to the date set by and subject to the conditions set forth in 17-5-204, are validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body or the governing board or commission or officers thereof to authorize and issue such bonds or to sell, exchange, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution, or delivery, and bonds of such public bodies under the authority of such proceedings are binding, legal, valid, and enforceable obligations of such public body.

History: En. 79-2003 by Sec. 3, Ch. 265, L. 1975; amd. Sec. 3, Ch. 564, L. 1977; R.C.M. 1947, 79-2003.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Local government debt, Art. VIII, sec. 10, Mont. Const.

17-5-204. Period of application. (1) This part does not apply to or affect any action or appeal instituted on or before the date to which it has most recently been extended, in which the validity of any such proceeding or of any such bonds is at issue.

(2) The application of this part may be extended by act of the legislature to any date provided therein.

History: En. 79-2004 by Sec. 4, Ch. 265, L. 1975; amd. Sec. 2, Ch. 486, L. 1975; amd. Sec. 4, Ch. 564, L. 1977; R.C.M. 1947, 79-2004; amd. Sec. 1, Ch. 2, L. 1979.

17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to April 19, 1983.

History: En. Sec. 5, Ch. 564, L. 1977; R.C.M. 1947, 79-2005; amd. Sec. 2, Ch. 2, L. 1979; amd. Sec. 2, Ch. 282, L. 1981; amd. Sec. 1, Ch. 576, L. 1983.

Compiler's Comments

1983 Amendment: Changed "April 6, 1981" to "April 19, 1983".

1981 Amendment: Substituted "April 6, 1981" for "January 15, 1979".

Part 3

Refunding Bonds

Part Cross-References

Municipal refunding revenue bonds — option 1, Title 7, ch. 7, part 45.

The Revenue Bond Refinancing Act of 1937, Title 7, ch. 7, part 46.

17-5-301. Refunding bonds or debentures authorized — interest rate. The board of examiners is hereby authorized and empowered to refund any issue of bonds, highway or other debentures heretofore issued by the state and which are outstanding or which may hereafter be issued by the state whenever in the judgment of such board it shall be deemed for the best interests of the state to do so. Refunding bonds or debentures shall not be issued in any greater amount than will be required to pay the principal and interest of the bonds or debentures to be refunded, costs of issuance, plus any defaulted interest thereon.

History: **En. Sec. 1, Ch. 5, L. 1945; R.C.M. 1947, 79-1801; amd. Sec. 7, Ch. 184, L. 1983.**

Compiler's Comments

1983 Amendment: Deleted former (1) and (2), which read: "(1) when the amount of any such issue of bonds or debentures is less than $500,000, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least ½ of 1% per annum less than the rate of interest on the bonds to be refunded;

(2) when the amount of any such issue of bonds or debentures is more than $500,000, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least ¼ of 1% per annum less than the rate of interest on the bonds to be refunded; and"; made former (3) second sentence of section, in which was inserted "and interest" after "the principal" and "costs of issuance" before "plus any defaulted interest".

17-5-302. Character of bonds — amortization or serial. (1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners.

(2) The board of examiners shall prescribe all other details for the form, notice, and time of sale of the bonds or debentures.

(3) They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

History: **En. Sec. 2, Ch. 5, L. 1945; amd. Sec. 11, Ch. 260, L. 1959; R.C.M. 1947, 79-1802.**

Cross-References

Facsimile signatures and seals, 2-16-114.

17-5-303. Application of refunding bond law. All of the provisions of the act authorizing the issuance of the bonds or debentures which are to be refunded, insofar as the same relate to the issuance and sale, term and rate of interest, tax levies or funds for the payment and interest thereof, and time and manner of such payments, shall apply fully to such refunding bonds or debentures, except insofar as the same may be in conflict with the provisions of this part or with the provisions of any law authorizing particular refunding bonds.

History: **En. Sec. 4, Ch. 5, L. 1945; R.C.M. 1947, 79-1804; amd. Sec. 8, Ch. 184, L. 1983.**

Compiler's Comments

1983 Amendment: At end of section, inserted "or with the provisions of any law authorizing particular refunding bonds".

17-5-304. Cost and expense of refunding. The board of examiners may require the purchaser to bear the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may be paid out of the sinking and interest fund when there is money in such fund. The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law.

History: **En. Sec. 5, Ch. 5, L. 1945; R.C.M. 1947, 79-1805; amd. Sec. 9, Ch. 184, L. 1983.**

Compiler's Comments

1983 Amendment: In last sentence, substituted "transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law" for "transferred to and shall become the sinking and interest fund for such refunding bonds or debentures. Any and all moneys thereafter received by the state treasurer for such sinking and interest fund shall be placed in the sinking and interest fund of such refunding bonds or debentures".

17-5-305. Sale of bonds and debentures. The refunding bonds or debentures which may be issued under the provisions of this part shall be sold by the board of examiners in such manner as they shall deem for the best interests of the state, provided that:

(1) none thereof shall be sold at less than its par value; and

(2) if the state shall hold any bonds or debentures to be refunded by any such issue of refunding bonds or debentures as investments of institutional or other funds, the same may be exchanged for the refunding bonds or debentures if such exchange be authorized by the proper state officers or board.

History: **En. Sec. 3, Ch. 5, L. 1945; R.C.M. 1947, 79-1803; amd. Sec. 10, Ch. 184, L. 1983.**

Compiler's Comments

1983 Amendment: Deleted from end of (2) "subject, however, to the provisions for reduced interest rates required by 17-5-301".

Part 4

Long-Range Building Program Bonds

Part Cross-References

Cigarette tax to retirement of long-range building bonds, 16-11-111.

Liability of officers for failure to create sinking fund for bond payment, 20-9-444.

17-5-401. Definitions. (1) "Board", "department", and "treasurer" mean the board of examiners, department of administration, and state treasurer, respectively.

(2) "Capital projects fund" means a separate long-range building program fund which is created within the capital projects fund type established in 17-2-102.

(3) "Long-range building program" means and includes all buildings, structures, and facilities to be constructed, repaired, used, equipped, or furnished and land to be acquired therefor with the consent of the legislature in accordance with 17-7-202 and 18-2-101 through 18-2-105.

(4) "Long-range building program bonds" means and includes all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this part.

(5) "Debt service account" means a separate long-range building program fund which is created within the debt service fund type established in 17-2-102.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 1, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "Capital projects fund" for "Clearance fund account", "program fund" for "program subfund", and "capital projects fund type" for "bond proceeds and insurance clearance fund"; and in (5), substituted "Debt service account" for "Sinking fund account", "program fund" for "program subfund", and "debt service fund type" for "sinking fund".

Cross-References

Board of Examiners continued in Department of Administration, 2-15-1007.

17-5-402. Authority to issue long-range building program bonds. (1) When authorized by the vote of two-thirds of the members of each house of the legislature or of a majority of the electors voting thereon, if so provided by law, and within the limits of such authorization and the further limitations in this section and 17-5-403, the board may issue and sell bonds of the state in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of long-range building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973; R.C.M. 1947, 79-2202(part).

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Facsimile signatures of public officials, 2-16-114.

Student building fees at Montana State University, 20-25-401.

17-5-403. Form, principal and interest, fiscal agent, and deposit of proceeds. (1) Each series of such bonds shall be issued by the board upon request of the department, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board shall determine subject to the limitations contained in this section and 17-5-402.

(2) In the issuance of each series of such bonds, the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on all such bonds then outstanding and on the series so to be issued will not exceed 50% of the average annual amount collected during the 3 then next preceding fiscal years from the special taxes pledged by law to the debt service account at the time of such issuance, except that this provision shall not

constitute a covenant of the state for the security of the bonds issued pursuant to this part after January 1, 1973, and the state reserves the right to amend this subsection in any manner after all bonds issued prior to that date and the interest thereon have been fully paid or the state's liability thereon has been otherwise fully discharged.

(3) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of bonds issued hereunder shall be deposited in the capital projects fund, except that any premiums and accrued interest received shall be deposited in the debt service account.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973; R.C.M. 1947, 79-2202(part); amd. Sec. 2, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: In middle of (2) and at end of section, substituted "debt service account" for "sinking fund account"; and in (5), substituted "capital projects fund" for "clearance fund account".

Cross-References

Facsimile signatures of public officials, 2-16-114.

17-5-404. Use of capital projects fund. The capital projects fund shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 3, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: Changed "clearance fund account" to "capital projects fund".

Cross-References

Board of Examiners continued in Department of Administration, 2-15-1007.

Fund structure, 17-2-102.

Maintenance of fund and account records and interfund loans, 17-2-105.

17-5-405. Debt service account. (1) From and after the pledge and appropriation of any special tax to the debt service account, as provided and contemplated in this section, 17-5-407, and 17-5-408, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the debt service account.

(2) No special taxes pledged to the debt service account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this part prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to

the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds.

(3) Subject to the provisions of subsections (1) and (2), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the debt service account.

(4) Money in the debt service account shall be used: first, to pay interest and principal when due on long-range building program bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(5) Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (4) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (4), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the debt service account to the general fund.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(1) thru (3); amd. Sec. 4, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: Throughout section, substituted "debt service account" for "sinking fund account".

Cross-References

Fund structure, 17-2-102.

Amount authorized and reservation of future authorizations — payment, 17-5-503.

State pledge of gasoline tax — use, 17-5-507.

17-5-406. Use of debt service account. The debt service account shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay long-range building program bonds and interest thereon when due so long as any such bonds or interest remain unpaid.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 5, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "debt service account" for "sinking fund account".

Cross-References

Fund structure, 17-2-102.

17-5-407. Reservation of power to pledge taxes — redemption — refunding bonds. (1) The state reserves the power, by enactment of the legislature or the people, to levy, impose, and assess and to pledge and appropriate to the debt service account any tax specially designated therein or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislature or the people for the redemption and prepayment of any long-range building program bonds or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds.

(2) Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in 17-5-403(2), substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded.

(3) Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the debt service account, to provide funds for payment of principal or interest due on long-range building program bonds when and if and to the extent that the debt service account is insufficient for this purpose.

History: **En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(4); amd. Sec. 6, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: In (1) and (3), substituted "debt service account" for "sinking fund account".

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the debt service account 11% of all money, except as provided in 15-31-702, received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the debt service account 79.75% of all money received from the collection of the 16-cent excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2).

History: **En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(5), (6); amd. Sec. 14, Ch. 634, L. 1979; amd. Sec. 4, Ch. 267, L. 1981; amd. Sec. 7, Ch. 298, L. 1983; amd. Sec. 3, Ch. 608, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 298 substituted "debt service account" for "sinking fund account" in three places.

Chapter 608 increased the amount credited to the debt service account in (2) from 73% to 79.75%; increased the excise tax from 12 to 16 cents in (2).

1981 Amendment: Increased the amount credited to the sinking fund account (now debt service account) in (2) from 15% to 73%; increased the excise tax from 9 to 12 cents in (2); deleted "(1)" and "The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes which are levied, imposed, and assessed by subsection (2) and (3) of 16-11-111, as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated or after the necessary funds have been set aside for such payment and redemption as provided in this part." after "16-11-111" in (2).

17-5-409. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and retention of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this part.

History: **En. Sec. 4, Ch. 276, L. 1965; amd. Sec. 4, Ch. 510, L. 1973; R.C.M. 1947, 79-2204.**

17-5-410. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding $31,550,505, over and above the amount of the long-range building program bonds outstanding January 1, 1981, upon the conditions and in the manner stated in this part. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in 17-5-402 and 17-5-407. The authority contained in this section is in addition to any other authorization to the board to issue long-range building program bonds.

History: **En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971; amd. Sec. 5, Ch. 510, L. 1973; R.C.M. 1947, 79-2205; amd. Sec. 1, Ch. 644, L. 1979; amd. Sec. 1, Ch. 604, L. 1981.**

Compiler's Comments

1981 Amendment: In the first sentence, substituted "$31,550,505" for "$12 million" and "1981" for "1979".

17-5-411. Agreement with division of workers' compensation. If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing a workers' compensation building in Helena, the board of examiners and division of workers' compensation shall enter into an agreement pursuant to which the division shall agree to pay the state treasurer for deposit in the debt service account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the building, the income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the division's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the division available therefor.

History: **En. Sec. 2, Ch. 604, L. 1981; amd. Sec. 8, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: Near middle of first sentence, substituted "debt service account" for "sinking fund account".

17-5-412. Agreement with department of labor. If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing employment service buildings, the board of examiners and department of labor and industry shall enter into an agreement pursuant to which the department shall agree to pay the state treasurer for deposit in the debt service account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the buildings, income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the department's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the department available therefor.

History: En. Sec. 3, Ch. 604, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence, substituted "debt service account" for "sinking fund account".

1981 Amendment: Substituted references to the Department of Labor and Industry for references to the Employment Security Division.

17-5-413. Agreements for benefit of state. The agreements to be made pursuant to 17-5-411 and 17-5-412 are solely for the benefit of the state and are not enforceable by the holders of the bonds.

History: En. Sec. 4, Ch. 604, L. 1981.

17-5-414. Authorization of bonds. The board of examiners is authorized to issue and sell long-range building program bonds in an amount not exceeding $39,334,695, over and above the amount of long-range building program bonds outstanding January 1, 1983, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The board of examiners is also authorized to refund such bonds in accordance with Title 17, chapter 5, part 3, if it is deemed that such refunding would be in the best interest of the state. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell long-range building program bonds or refunding bonds.

History: En. Sec. 1, Ch. 643, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

Compiler's Comments

Erroneous Coordination: Section 5, Ch. 643, L. 1983, provided: "If House Bill 511 is passed and approved, the bonds authorized under this act must be issued pursuant to House Bill 511, and the references to Title 17, chapter 5, part 4, in sections 1 through 3 are changed to House Bill 511." House Bill 511, which became Ch. 608, L. 1983, increased the tax on cigarettes to finance long-range building bonds. As originally drafted, sec. 5, Ch. 643, L. 1983, referred to House Bill 448 [LC 1147], which became Ch. 184, L. 1983. Chapter 184 was codified at Title 17, ch. 5, part 8. Section 2(3) of Ch. 184, L. 1983, provides that no additonal long-range building bonds may be issued under Title 17, ch. 5, part 4. The compiler has substituted references to Title 17, ch. 5, part 8, for references to Title 17, ch. 5, part 4, in Ch. 643, L. 1983, because Ch. 608, L. 1983, has nothing to do with the issuance of bonds, only with the method of financing long-range building bonds.

17-5-415. Authorization for refunding bonds. The board of examiners is authorized to issue and sell refunding bonds in an amount necessary to refund any or all long-range building program bonds heretofore issued under Title 17, chapter 5, part 8. The refunding bonds are to be issued in accordance with the terms and in the manner required by Title 17, chapter

5, part 3. The refunding bonds shall be general obligations secured by a pledge of the full faith and credit and taxing powers of the state. Any money which may be released from the debt service account provided for in 17-5-405 as a result of the issuance of refunding bonds shall revert to the fund of origin to the extent not required to provide for the debt service on the refunded bonds. Money required for payment of debt service on the refunded bonds may be held in trust in a special escrow account at a bank or trust company for the benefit of the refunded bonds.

History: En. Sec. 2, Ch. 643, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

Compiler's Comments

1983 Amendments — Erroneous Coordination: Section 5, Ch. 643, L. 1983, provided: "If House Bill 511 is passed and approved, the bonds authorized under this act must be issued pursuant to House Bill 511, and the references to Title 17, chapter 5, part 4, in sections 1 through 3 are changed to House Bill 511." House Bill 511, which became Ch. 608, L. 1983, increased the tax on cigarettes to finance long-range building bonds. As originally drafted, sec. 5, Ch. 643, L. 1983, referred to House Bill 448 [LC 1147], which became Ch. 184, L. 1983. Chapter 184 was codified at Title 17, ch. 5, part 8. Section 2(3) of Ch. 184, L. 1983, provides that no additional long-range building bonds may be issued under Title 17, ch. 5, part 4. The compiler has substituted references to Title 17, ch. 5, part 8, for references to Title 17, ch. 5, part 4, in Ch. 643, L. 1983, because Ch. 608, L. 1983, has nothing to do with the issuance of bonds, only with the method of financing long-range building bonds.

Chapter 281, near middle of section, substituted "debt service account" for "sinking fund account".

17-5-416. Agreement with the department of fish, wildlife, and parks. If the proceeds of any bonds or notes issued pursuant to Title 17, chapter 5, part 8, are appropriated for the construction or renovation of fish hatcheries or regional headquarters facilities of the department of fish, wildlife, and parks, the board of examiners and the department of fish, wildlife, and parks may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the department must be made from funds available therefor.

History: En. Sec. 3, Ch. 643, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

Compiler's Comments

Erroneous Coordination: Section 5, Ch. 643, L. 1983, provided: "If House Bill 511 is passed and approved, the bonds authorized under this act must be issued pursuant to House Bill 511, and the references to Title 17, chapter 5, part 4, in sections 1 through 3 are changed to House Bill 511." House Bill 511, which became Ch. 608, L. 1983, increased the tax on cigarettes to finance long-range building bonds. As originally drafted, sec. 5, Ch. 643, L. 1983, referred to House Bill 448 [LC 1147], which became Ch. 184, L. 1983. Chapter 184 was codified at Title 17, ch. 5, part 8. Section 2(3) of Ch. 184, L. 1983, provides that no additional long-range building bonds may be issued under Title 17, ch. 5, part 4. The compiler has substituted references to Title 17, ch. 5, part 8, for references to Title 17, ch. 5, part 4, in Ch. 643, L. 1983, because Ch. 608, L. 1983, has nothing to do with the issuance of bonds, only with the method of financing long-range building bonds.

17-5-417. Benefit of state. The agreement made pursuant to 17-5-416 is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 4, Ch. 643, L. 1983.

17-5-418 through 17-5-420 reserved.

17-5-421. Bonds for Montana college of mineral science and technology. (1) The board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in this part, in an amount not exceeding $2,275,000, over and above the amount of the long-range building program bonds outstanding on January 1, 1977, for the purpose of paying costs of acquiring, constructing, and equipping a physical education facility for and to be located at Montana college of mineral science and technology. The issuance and sale of the bonds shall be subject to an undertaking by the board of regents to pay to the state treasurer for deposit in the debt service account established pursuant to 17-5-405, from the sources hereinafter defined, amounts sufficient to pay as due the principal of and interest on the bonds; provided, however, this undertaking shall be enforceable only by the state treasurer and shall not be enforceable by the holders of such bonds. The payments by the board of regents shall be made from available revenues derived from resident and nonresident student building fees charged to students enrolled at Montana college of mineral science and technology, interest and income from lands granted by the United States of America to the state pursuant to 25 Stat. 676 for the establishment and maintenance of the college and the operation of the physical education facility, and other revenue producing residence and student union facilities at the college, subject to the prior pledge and appropriation of such revenues to the payment of other obligations of the board of regents.

(2) The proceeds of the bonds authorized by subsection (1) of this section shall be deposited in the capital projects fund created by 17-5-401.

History: En. Sec. 1, Ch. 507, L. 1977; R.C.M. 1947, 78-1401(part); amd. Sec. 10, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of second sentence of (1), substituted "debt service account" for "sinking fund account"; and in (2), substituted "capital projects fund" for "clearance fund account".

17-5-422. Bonds for state capitol improvements. (1) The board of examiners is authorized to issue and sell long-range building program bonds, upon the conditions and in the manner stated in this part, in the principal amount not to exceed $5 million, for the purpose of financing costs of improvements to the state capitol.

(2) There is appropriated to the debt service account established pursuant to 17-5-405 from the revenues of the capitol building land grant (exclusive of income derived from investment of accumulated revenues) in each fiscal year during the term of the bonds authorized by subsection (1) an amount sufficient to pay the principal of and interest on the bonds as due and to establish and maintain required reserves therefor. The appropriation shall be reduced in each fiscal year by the amount, if any, of income received in that year from investment of the reserve attributable to the bonds. The appropriation made by this section is solely for the benefit of the state and is not enforceable by the holders of the bonds.

History: En. Secs. 1, 2, Ch. 600, L. 1981; amd. Sec. 11, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), substituted "debt service account" for "sinking fund account".

Part 5

General Obligation Highway Bonds

Part Cross-References

Establishing reserve for highway bonds, 60-3-201.

17-5-501. Authority for general obligation highway bonds. The board of examiners is authorized to issue and sell general obligation highway bonds of the state for the purpose of acquiring a suitable site for and erecting and equipping a department of highways headquarters building and complex at or near Helena, Montana, to replace the present laboratory and administration buildings which are declared to be inadequate for such purpose. The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part.

History: **En. Sec. 1, Ch. 477, L. 1975.**

17-5-502. Site acquisition and construction authorized. Upon the sale of the bonds, the department of administration, acting under the supervision and with the approval of the board of examiners, is empowered and directed to acquire the site for and to proceed with the erection and equipping of a building of suitable construction and design for use as a headquarters building and necessary supporting structures for laboratories and storage for the Montana department of highways.

History: **En. Sec. 2, Ch. 477, L. 1975.**

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

17-5-503. Amount authorized and reservation of future authorizations — payment. The aggregate amount of highway bonds authorized by this part for the purpose expressed in 17-5-501 shall not exceed the sum of $7,400,000. The state reserves the privilege of issuing additional highway bonds, when and if authorized by law, for this purpose and for any other purpose for which money derived from the sources described in Article VIII, section 6, of the constitution is authorized by that section to be expended. The board of examiners is also authorized to issue additional highway bonds for the purpose of refunding bonds issued pursuant to or as contemplated in this chapter, in amounts not exceeding the principal amount of the bonds refunded, when the board determines that the refunding of any outstanding bonds is in the best interests of the state. All bonds issued for the purposes contemplated in this section shall be payable from the same debt service account on a parity as to both principal and interest with the bonds authorized in 17-5-501, provided that in the issuance of each series of such bonds the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on such bonds then outstanding (except bonds refunded) and on the series so to be issued will not exceed 25% of the amount collected during the then next preceding fiscal year from the tax or taxes pledged by law to the debt service account at the time of such issuance.

The provisions of this section shall not constitute a covenant with the holders of any bonds issued hereunder.

History: En. Sec. 3, Ch. 477, L. 1975; amd. Sec. 12, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: In second to last sentence, substituted "debt service account" for "sinking fund account" in two places.

17-5-504. Forms, interest, and maturity. Such bonds shall be issued by the board, upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest, maturing at such times not exceeding 20 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agent of the state, as the board shall determine, subject to the limitations contained herein.

History: En. Sec. 4, Ch. 477, L. 1975.

17-5-505. Board of examiners to prescribe form and employ fiscal agent. In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The board is authorized to employ a fiscal agent to assist it in the performance of its duties hereunder. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

History: En. Sec. 5, Ch. 477, L. 1975.

Cross-References

Facsimile signatures and seals, 2-16-114.

17-5-506. Deposit and use of proceeds. All proceeds of bonds issued hereunder shall be deposited in a separate highway capital projects fund which is created within the capital projects fund type established by 17-2-102, referred to herein as the "highway capital projects fund", and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury. The proceeds of the bonds authorized in 17-5-501 shall be used only to pay costs of acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described. The proceeds of any additional bonds authorized as contemplated in 17-5-503, except refunding bonds, shall be used only for purposes authorized under the provisions of Article VIII, section 6, of the constitution, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

History: **En. Sec. 6, Ch. 477, L. 1975; amd. Sec. 13, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence, substituted "highway capital projects fund which is created within the capital projects fund type established by 17-2-102, referred to herein as the highway capital projects fund" for "highway subfund which is created within the bond proceeds and insurance clearance fund established by 17-2-102, referred to herein as the clearance fund account".

Cross-References

Use of clearance fund, 17-5-404.

17-5-507. State pledge of gasoline tax — use. (1) The state pledges and appropriates and directs to be credited as received to the debt service account, as herein defined, that portion of the net proceeds from the collection of gasoline taxes which may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation. The term "net proceeds", as used herein, means all funds on hand in the treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such taxes for which applications have been made pursuant to law but which have not yet been paid or rejected. The term "debt service account", as used herein, means a separate highway fund which is created within the debt service fund type established by 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(2) Money in the debt service account shall be used: first, to pay interest and principal when due on highway bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(3) Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the state special revenue fund, highway account. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next receipts of net proceeds from the collection of gasoline taxes.

History: **En. Sec. 7, Ch. 477, L. 1975; amd. Sec. 14, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: Throughout section, substituted "debt service account" for "sinking fund account"; in last sentence of (2), substituted "highway fund" for "highway subfund" and "debt service fund type" for "sinking fund"; and in (3), substituted "state special revenue fund" for "earmarked revenue fund".

Cross-References

Distribution and use of proceeds of gasoline dealers' license tax, 60-3-201.

Part 6

Employment Security Building Bonds

Part Cross-References
Agreement between Division and Board of Examiners, 17-5-412.

17-5-601. Bond issue for employment security building addition on capitol grounds. The board of examiners is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds adjacent to the capitol building, namely on lots 9 through 24, inclusive, in block 20 of the Corbin addition to the city of Helena, county of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

History: En. Sec. 1, Ch. 418, L. 1971; R.C.M. 1947, 78-1011.

17-5-602. Architect and construction and design. Upon the sale of the bonds, the board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security commission within the limitations prescribed by the United States department of labor, manpower administration, and the United States secretary of labor.

History: En. Sec. 2, Ch. 418, L. 1971; R.C.M. 1947, 78-1012.

17-5-603. Bids and contractor's bond. The board of examiners shall call for bids for the construction of and for the landscaping and paving around said addition to the employment security building and let contracts for the same, all in accordance with the laws of Montana. Said board shall require the contractor to give bond to the state in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

History: En. Sec. 3, Ch. 418, L. 1971; R.C.M. 1947, 78-1013.

Cross-References
Construction contracts, Title 18, ch. 2.

17-5-604. Amount of bonds authorized. The aggregate amount of bonds authorized by 17-5-601 through 17-5-610 for the purpose of herein expressed shall not exceed the sum of $499,000.

History: En. Sec. 4, Ch. 418, L. 1971; R.C.M. 1947, 78-1014.

17-5-605. Interest rate, form, and other provisions of bonds. Bonds issued and sold by the board of examiners under authority of 17-5-601 through 17-5-610 shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the board of examiners shall prescribe, and shall be payable over such period of years, not exceeding 20, as said board may specify. All bonds shall be optional and redeemable 5 years after the date of issue and on any interest payment date thereafter, at the option of the board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: **En. Sec. 5, Ch. 418, L. 1971; R.C.M. 1947, 78-1015.**

17-5-606. Sale of bonds and registration. Said bonds shall be sold by the board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of 17-5-601 through 17-5-610; provided that none of such bonds shall be sold for less than par plus accrued interest to the date of delivery of the bonds. Before delivery, each of said bonds shall be registered with the state treasurer, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: **En. Sec. 6, Ch. 418, L. 1971; R.C.M. 1947, 78-1016.**

17-5-607. Payment of principal and interest. (1) The principal and interest of the bonds authorized by 17-5-601 through 17-5-610 shall be payable out of the following funds and from them only:

(a) all money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended; and

(b) all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana.

(2) Immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, the money shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by 17-5-601 through 17-5-610 to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of $499,000.

History: **En. Sec. 7, Ch. 418, L. 1971; R.C.M. 1947, 78-1017.**

17-5-608. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-601 through 17-5-610, there is created an employment security commission building account within a debt service fund in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the addition to the employment security building, including the landscaping and paving around it, shall be paid into that account.

History: **En. Sec. 8, Ch. 418, L. 1971; amd. Sec. 1, Ch. 61, L. 1977; R.C.M. 1947, 78-1018; amd. Sec. 15, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence, substituted "debt service fund" for "sinking fund".

17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 with moneys from the investment funds, notwithstanding the provisions of 17-6-211.

History: En. Sec. 9, Ch. 418, L. 1971; amd. Sec. 2, Ch. 61, L. 1977; R.C.M. 1947, 78-1019.

17-5-610. Budget Act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 418, L. 1971; R.C.M. 1947, 78-1020.

Cross-References

Budgeting, Title 17, ch. 7.

17-5-611. Bond issue for employment security buildings throughout state. The board of examiners is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping, and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

(1) employment security commission (employment service building), Great Falls, Montana;

(2) employment security commission (employment service building), addition, Billings, Montana;

(3) employment security commission (employment service building), Missoula, Montana;

(4) employment security commission (employment service building), Helena, Montana.

History: En. Sec. 1, Ch. 419, L. 1971; R.C.M. 1947, 78-1021.

17-5-612. Architect and construction and design. Upon the sale of the bonds, the board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration, and the United States secretary of labor.

History: En. Sec. 2, Ch. 419, L. 1971; R.C.M. 1947, 78-1022.

Cross-References

Policy regarding practice of architecture — preparation of working drawings by department limited, 18-2-111.

Appointment of architects and consulting engineers, 18-2-112.

Architects on public buildings to be certified, 18-2-113.

Seal and signature of architect on plans, 18-2-114.

17-5-613. Bids and contractor's bond. The board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them and let contracts for the same, all in accordance with the laws of Montana. Said board shall require each prime contractor to give bond to the state in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 419, L. 1971; R.C.M. 1947, 78-1023.

Cross-References

Performance, labor, and materials bonds, Title 18, ch. 2, part 2.

17-5-614. Amount of bonds authorized. The aggregate amount of bonds authorized by 17-5-611 through 17-5-620 for the purpose herein expressed shall not exceed the sum of $1,055,928.

History: En. Sec. 4, Ch. 419, L. 1971; R.C.M. 1947, 78-1024.

17-5-615. Interest rate, term, and other provisions of bonds. Bonds issued and sold by the board of examiners under authority of 17-5-611 through 17-5-620 shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the board of examiners shall prescribe, and shall be payable over such period of years, not exceeding 20, as said board may specify. All bonds shall be optional and redeemable 5 years after the date of issue and on any interest payment date thereafter at the option of the board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer.

History: En. Sec. 5, Ch. 419, L. 1971; R.C.M. 1947, 78-1025.

17-5-616. Sale of bonds and registration. Said bonds shall be sold by the board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of 17-5-611 through 17-5-620; provided that none of such bonds shall be sold for less than par plus accrued interest to the date of delivery of the bonds. Before delivery, each of said bonds shall be registered with the state treasurer, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 419, L. 1971; R.C.M. 1947, 78-1026.

17-5-617. Payment of principal and interest. (1) The principal and interest of the bonds authorized by 17-5-611 through 17-5-620 shall be payable out of the following funds and from them only:

(a) all money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended; and

(b) all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana.

(2) Immediately following occupancy of said buildings upon completion of erection, pursuant to Title III of the Social Security Act, as amended, the money shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by 17-5-611 through 17-5-620 to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of $1,055,928.

History: En. Sec. 7, Ch. 419, L. 1971; R.C.M. 1947, 78-1027.

17-5-618. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by

17-5-611 through 17-5-620, there is created an employment security commission building account within the debt service fund type in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the buildings, including the landscaping and paving around them, shall be paid into that account.

History: En. Sec. 8, Ch. 419, L. 1971; amd. Sec. 3, Ch. 61, L. 1977; R.C.M. 1947, 78-1028; amd. Sec. 16, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, substituted "debt service fund type" for "sinking fund".

Cross-References

Fund structure, 17-2-102.

Maintenance of fund and account records and interfund loans, 17-2-105.

17-5-619. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-611 through 17-5-620 with moneys from the investment funds, notwithstanding the provisions of 17-6-211.

History: En. Sec. 9, Ch. 419, L. 1971; amd. Sec. 4, Ch. 61, L. 1977; R.C.M. 1947, 78-1029.

17-5-620. Budget Act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 419, L. 1971; R.C.M. 1947, 78-1030.

Cross-References

Budgeting, Title 17, ch. 7.

Part 7

Coal Severance Tax Bonds — Water Development

Part Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Protection and improvement, Art. IX, sec. 1, Mont. Const.

Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.

Coal severance tax — general provisions, Title 15, ch. 35, part 1.

Water resources — administration, Title 85, ch. 1, part 2.

Water development program, Title 85, ch. 1, part 6.

Dams and reservoirs, Title 85, ch. 15.

17-5-701. State of Montana coal severance tax bonds. This part provides for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to finance water resource development projects and activities in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations.

History: En. Sec. 24, Ch. 505, L. 1981.

17-5-702. Purpose and intent. (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by act of the legislature for financing specific water resource development projects and activities in the state authorized by the legislature and to guarantee redemption of such bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and such other money as the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include water resource development projects and activities as part of the water development program established in Title 85, chapter 1, part 6. The legislature further intends that the income from water resource development projects and activities in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the water development state special revenue account established in 85-1-604.

History: **En. Sec. 25, Ch. 505, L. 1981; amd. Sec. 17, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: Near end of section, substituted "state special revenue account" for "earmarked account".

17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a coal severance tax permanent fund; and

(c) a coal severance tax income fund.

(2) On each December 31 and June 30 the state treasurer shall transfer to the coal severance tax permanent fund all money in the coal severance tax bond fund except the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next ensuing semiannual payment date.

History: **En. Sec. 26, Ch. 505, L. 1981; amd. Sec. 18, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: Throughout section, changed "subfund" to "fund".

17-5-704. Investment of funds. (1) Money in the coal severance tax bond fund, the coal severance tax permanent fund, and the coal severance tax income fund must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all funds must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature.

(2) Beginning on July 1, 1983, the legislature shall appropriate 15% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year. The funds appropriated to the coal severance tax permanent fund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature.

History: **En. Sec. 27, Ch. 505, L. 1981; amd. Sec. 1, Ch. 149, L. 1983; amd. Sec. 19, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 149, at end of (1), inserted "until appropriated by the legislature".

Chapter 298 changed "subfund" to "fund" throughout section.

17-5-705. Pledge of coal severance tax bond fund. The money in the coal severance tax bond fund is pledged to the payment of the principal and interest on all state of Montana coal severance tax bonds. All bonds issued after July 1, 1981, wherein the money in the coal severance tax bond fund is pledged for their retirement shall be called "state of Montana coal severance tax bonds".

History: **En. Sec. 28, Ch. 505, L. 1981; amd. Sec. 20, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: Throughout section, changed "subfund" to "fund".

17-5-706. Authority to issue coal severance tax bonds. The board of examiners, upon approval of the legislature as hereinafter provided, shall issue and sell coal severance tax bonds to finance such approved water resource development projects and activities when authorized to do so by any law that sets out the amount and purpose of the issue. Each project or activity shall be separately approved as to amount by a two-thirds vote of each house of the legislature.

History: **En. Sec. 29, Ch. 505, L. 1981.**

17-5-707. Board of examiners to issue bonds. The board of examiners may issue and sell coal severance tax bonds, and no other agency of the state is so authorized. Any action taken by the board of examiners under this part must be approved by a majority vote of its members.

History: **En. Sec. 30, Ch. 505, L. 1981.**

17-5-708. Special fund revenues. (1) If a law authorizing a coal severance tax bond issue for a specific purpose and in a specific amount contemplates the pledge and receipt of revenues, assets, or money other than or in addition to the money in the coal severance tax bond fund, then the money derived from such pledged revenues, assets, and money must be paid into a special bond fund for the benefit of such bonds, which must be part of a debt service fund of the state treasury fund structure.

(2) Money must be withdrawn from the coal severance tax bond fund and paid to the special bond fund as necessary to provide for payment of principal and interest on the coal severance tax bonds secured by a pledge of the special bond fund.

History: **En. Sec. 31, Ch. 505, L. 1981; amd. Sec. 21, Ch. 298, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted "severance tax bond fund" for "severance tax bond subfund", "special bond fund" for "special bond account", and "a debt service fund" for "the sinking fund"; and in (2), substituted "severance tax bond fund" for "severance tax bond account" and "special bond fund" for "special account".

Cross-References

Fund structure, 17-2-102.

17-5-709. Continued tax deposit limit on additional bonds. (1) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond fund of the coal severance tax which, together with such other revenues, assets, and money as may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond fund, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenues, assets, or money deposited in one or more special bond funds used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while such bonds are outstanding.

History: En. Sec. 32, Ch. 505, L. 1981; amd. Sec. 22, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: In (1) and (2), substituted "severance tax bond fund" for "severance tax bond subfund" and "special bond funds" for "special bond accounts".

17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of coal severance tax bonds must be issued by the board of examiners at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates, maturing at such times not exceeding 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board of examiners shall determine, subject to the limitations contained in this part.

(2) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Coal severance tax bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board of examiners is authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of a state of Montana coal severance tax bonds issue shall be deposited in a capital projects fund or a state special revenue account established for that bond issue, except that any premiums and accrued interest received shall be deposited in a debt service fund established for that bond issue.

History: En. Sec. 33, Ch. 505, L. 1981; amd. Sec. 23, Ch. 298, L. 1983.

Compiler's Comments

1983 Amendment: In (5), substituted "a capital projects fund or a state special revenue account" for "a bond proceeds and insurance clearance fund account" and substituted "debt service fund" for "sinking fund account".

Cross-References

Facsimile signatures and seals, 2-16-114.

Fund structure, 17-2-102.

17-5-711. Trust indenture. In the discretion of the board of examiners, a series of coal severance tax bonds may be secured by a trust indenture by and between the board of examiners and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

History: **En. Sec. 34, Ch. 505, L. 1981.**

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of county clerk, 7-4-2611.

Procedure to record documents, 7-4-2617.

Trust company defined — purposes for which may be formed, 32-1-107.

17-5-712. Provisions for protecting bondholders. Either the legislative act providing for the issuance of coal severance tax bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, and the departments, boards, or agencies of state government in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the projects financed with the proceeds of coal severance tax bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in this part.

History: **En. Sec. 35, Ch. 505, L. 1981.**

17-5-713. Personal liability — suit to compel performance. (1) The members of the board of examiners and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any coal severance tax bond issued by the board of examiners.

(2) Any holder of coal severance tax bonds or any person or officer being a party in interest, subject to any applicable coal severance tax agreements or trust indentures, may sue to enforce and compel the performance of the coal severance tax bond provisions as set out in this part.

History: **En. Sec. 36, Ch. 505, L. 1981.**

Cross-References

Bonds of state officers and employees, Title 2, ch. 9, part 6.

17-5-714. Negotiability of bonds. Coal severance tax bonds issued are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: **En. Sec. 37, Ch. 505, L. 1981.**

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

17-5-715. Signatures of board members. In the case any member of the board of examiners whose signature appears on coal severance tax bonds or coupons ceases to be a member before the delivery of the bonds, his signature is nevertheless valid and sufficient for all purposes, the same as if the member had remained in office until delivery.

History: En. Sec. 38, Ch. 505, L. 1981.

17-5-716. Refunding obligations. (1) The state board of examiners may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. Sec. 39, Ch. 505, L. 1981.

17-5-717. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state.

History: En. Sec. 40, Ch. 505, L. 1981.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-718. Tax exemption of bonds — legal investments. (1) All coal severance tax bonds, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivisions or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

(2) Coal severance tax bonds are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

History: En. Sec. 41, Ch. 505, L. 1981.

Cross-References

Investments, Title 17, ch. 6, part 2.

17-5-719. Limitation on amount of coal severance tax bonds issued. No more than $250 million worth of coal severance tax bonds may be issued for water development projects and activities.

History: En. Sec. 42, Ch. 505, L. 1981.

Part 8

General Obligation Bonds and Notes

17-5-801. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Bond act" means an act approved by the vote of two-thirds of the members of each house of the legislature or by a majority of the electors voting thereon, authorizing the issuance of bonds for the purpose set forth therein and adopting this part by reference.

(3) "Bonds" means general obligation bonds, notes, or other evidences of indebtedness issued in accordance with the provisions of this part.

(4) "Capital projects account" means a separate general obligation bond and note account created within the capital projects fund type established in 17-2-102.

(5) "Debt service account" means a separate general obligation bond and note account created within the debt service fund type established in 17-2-102.

(6) "Department" means the department of administration created in 2-15-1001.

(7) "Treasurer" means the ex officio state treasurer, referred to in 2-15-1002.

History: En. Sec. 1, Ch. 184, L. 1983.

17-5-802. Authority to issue general obligation bonds and notes. (1) When authorized by and within the limits of a bond act and as provided in this part, the board may issue and sell bonds of the state in such manner as it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to this part, with all interest thereon and premiums payable upon the redemption thereof. All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for such year, and sufficient revenues must be appropriated for payment thereof from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for payment thereof. No bonds may be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4.

History: En. Sec. 2, Ch. 184, L. 1983.

17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) In furtherance of each bond act, bonds may be issued by the board upon request of the department in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and on such notice, and payable at the office of such fiscal agency of the state as the board shall determine, subject to the limitations contained in this part and in the bond act.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available therefor in the general fund or from the proceeds of the bonds, in the discretion of the board.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.

History: **En. Sec. 3, Ch. 184, L. 1983.**

17-5-804. Use of capital projects account. The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

History: **En. Sec. 4, Ch. 184, L. 1983.**

17-5-805. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of the money to be derived from the sale of the bonds. The notes must be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes may be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 1 year after the date of issue may be issued from

time to time as the proceeds thereof are needed. Such notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board, or the state treasurer in the event of such delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

History: **En. Sec. 5, Ch. 184, L. 1983.**

17-5-806. Bid security. Notwithstanding 18-1-203, in any case where bids are solicited for the purchase and sale of bonds or notes under this part, the bid must be accompanied by lawful money of the United States or a cashier's check, certified check, bank money order, or bank draft drawn and issued by any federally chartered or state-chartered bank that is insured by the federal deposit insurance corporation, in such amount as may be required by the board or by the state treasurer under authority of 17-5-805.

History: **En. Sec. 6, Ch. 184, L. 1983.**

Part 9

Highway Revenue Bonds

17-5-901. Short title. This part may be cited as the "Montana Highway Revenue Bonds Act of 1983".

History: **En. Sec. 1, Ch. 557, L. 1983.**

17-5-902. Purpose. The purpose of this part is to provide for the financing of the cost of state highway and federal-aid highway projects through the issuance of highway revenue bonds secured by a pledge and appropriation of highway revenue.

History: **En. Sec. 2, Ch. 557, L. 1983.**

17-5-903. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created under 2-15-1007.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to this part as highway revenue bonds.

(3) "Cost", as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) "Department" means the department of highways provided for in Title 2, chapter 15, part 25.

(5) "Highway projects" means the construction, reconstruction, maintenance, and repair of federal-aid highways and state highways as such terms are defined in 60-1-103.

(6) "Highway revenues" means the revenues specified in Article VIII, section 6, of the Montana constitution as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the department in the state special revenue fund and the federal special revenue fund.

(7) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due.

History: **En. Sec. 3, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.**

Compiler's Comments

1983 Amendment: At end of (6), substituted "credited to the department in the state special revenue fund and the federal special revenue fund" for "credited to the highway earmarked revenue fund and the highway trust federal and private revenue account".

17-5-904 through 17-5-910 reserved.

17-5-911. Highway revenue bond debt service account — deposit of bond proceeds. (1) There is in the debt service fund a highway revenue bond debt service account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer must deposit such highway revenues as may be pledged to the payment of particular bonds, to the credit of the highway revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the highway revenue bond debt service account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in such separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon such funds, and such funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond debt service account are not sufficient for such purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) shall be retained in the separate accounts referred to in subsection (2).

(4) Notwithstanding 17-6-202 and except as provided in subsection (3), interest and investment earnings on the highway state special revenue account shall be credited to the general fund until July 1, 1985, and thereafter shall be retained in the highway state special revenue account.

History: **En. Sec. 4, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted language of first sentence for "There is in the highway earmarked revenue fund a highway revenue bond sinking account", and near end of subsection, substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (2), in first sentence substituted "state special revenue fund" for "highway earmarked revenue fund", and after "separate account" inserted "in the debt service fund", in second sentence substituted "highway revenue bond debt service account" for "separate account", in third sentence substituted "separate accounts in the state special revenue fund" for "separate accounts" and substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (3), substituted "the separate accounts referred to in subsection (2)" for "the highway earmarked revenue fund"; and in (4), substituted "highway state special revenue account" for "highway earmarked revenue fund" in two places.

17-5-912. Pledge of highway revenues. All or any portion of highway revenues may be pledged to the payment of the principal, interest, and redemption premium, if any, on particular issues of state highway revenue bonds, and such pledge is and remains at all times a first lien and prior charge upon such pledged highway revenues credited to the highway revenue bond debt service account, subject to a first lien and charge in favor of certain highway bonds as provided in 17-5-507 and subject to the pledge of particular highway revenues to secure particular issues of highway revenue bonds.

History: En. Sec. 5, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.

Compiler's Comments
1983 Amendment: Substituted "highway revenue bond debt service account" for "highway revenue bond sinking account".

17-5-913. Authority to issue highway revenue bonds. The board may issue and sell highway revenue bonds to finance the cost of highway projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The state reserves the right to issue additional bonds secured equally and ratably by the pledge and appropriation of the highway revenues or separately secured by a portion of highway revenues subject only to the pledge of particular highway revenues to secure particular bonds.

History: En. Sec. 6, Ch. 557, L. 1983.

17-5-914. Continuation of taxes — limit on additional highway revenue bonds. The legislature shall provide for the continued assessment, levy, collection, and deposit of highway revenues into the state special revenue fund for the credit of the department in amounts sufficient to pay, when due, the annual debt service charges on all outstanding highway revenue bonds. The board is authorized to include a contractual undertaking for the benefit of bondholders to this effect in the resolution or indenture under which the bonds are issued.

History: En. Sec. 7, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.

Compiler's Comments
1983 Amendment: Substituted "state special revenue fund for the credit of the department" for "highway earmarked revenue fund".

17-5-915 through 17-5-920 reserved.

17-5-921. Bond anticipation notes — issued when — payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds, which notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. Such notes must be authorized by the board and have such terms and provisions as may be provided

by resolution of the board; however, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes, and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

History: **En. Sec. 8, Ch. 557, L. 1983.**

17-5-922. Form — principal and interest — fiscal agent — bonds authorized. (1) Each series of bonds may be issued by the board at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates or the method of determining such rate or rates, maturing at such times, not more than 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of a fiscal agency of the state as the board shall determine, subject to the limitations contained in this part. Any action taken by the board under this part must be approved by at least a majority vote of its members.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(5) In connection with the issuance and sale of bonds, the board may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to this part. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

(6) No more than $150 million of bonds issued under this part may be outstanding at any time. No additional bonds, other than refunding bonds, may be issued until the pledge in favor of the highway revenue bonds is satisfied and discharged.

History: En. Sec. 9, Ch. 557, L. 1983.

17-5-923. Trust indenture. In the discretion of the board, bonds issued under this part may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Each trust indenture or an executed counterpart thereof must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk and recorder of the county in which the property covered by the trust indenture is located is constructive notice of its content to all persons from the time of filing, and the recording of the trust indenture or its content is not necessary.

History: En. Sec. 10, Ch. 557, L. 1983.

17-5-924. Provisions for protecting bondholders. The resolution of the board providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the departments, boards, or agencies of state government in relation to the construction, reconstruction, improvement, maintenance, and repair of the highway projects financed with the proceeds of the bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in this part.

History: En. Sec. 11, Ch. 557, L. 1983.

17-5-925. Personal liability — suit to compel performance. (1) The members of the board and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any bond issued by the board under this part.

(2) Any holder of bonds issued under this part or any person or officer who is a party in interest, subject to any applicable agreements or trust

indentures, may sue to enforce and compel the performance of the bond provisions as set out in this part.

History: En. Sec. 12, Ch. 557, L. 1983.

17-5-926. Negotiability of bonds. Bonds issued under this part are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: En. Sec. 13, Ch. 557, L. 1983.

17-5-927. Signatures of board members. In case any member of the board whose signature appears on bonds or coupons issued under this part ceases to be a member before the delivery of the bonds, his signature is nevertheless valid and sufficient for all purposes as if the member had remained in office until delivery.

History: En. Sec. 14, Ch. 557, L. 1983.

17-5-928. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of this part that relate to the issuance of the obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of the outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. Sec. 15, Ch. 557, L. 1983.

17-5-929. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state under this part.

History: En. Sec. 16, Ch. 557, L. 1983.

17-5-930. Tax exemption of bonds — legal investments. (1) All bonds issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

(2) Bonds issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

History: En. Sec. 17, Ch. 557, L. 1983.

Part 10

Actions

Part Cross-References

Action to restrain bond issues — time for bringing, 7-7-105, 20-9-465.

17-5-1001. Action to restrain bond issues. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by the state of Montana or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action or defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; R.C.M. 1947, 93-2612(part); amd. Sec. 4, Ch. 540, L. 1979.

Cross-References

Action to restrain bond issues — time for bringing, 7-7-105, 20-9-465.

Part 11

Public Obligations Registration

17-5-1101. Short title. This part may be cited as the "Model Public Obligations Registration Act of Montana".

History: En. Sec. 1, Ch. 364, L. 1983.

17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual whom an authorized officer may, either alone or with the concurrence of another or others, permit to affix his signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

(5) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(6) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee which in the ordinary course of its business maintains public obligation accounts for its customers.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in any such agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents; the successor or successors of any such official or official body; and such other person or group of persons as are assigned duties of such official or official body under applicable law from time to time.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the code. The term "public entity" may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

History: En. Sec. 2, Ch. 364, L. 1983.

17-5-1103. Declarations of state interest — purposes. (1) Sections 103 and 103A of the code provide that interest with respect to certain obligations may not be exempt from the income tax if they are not in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of this part to authorize all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of sections 103 and 103A of the code.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form will significantly affect the relationships, rights, and duties of issuers of and the persons that deal with obligations and, by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently, depending on their legal and financial characteristics, their markets, and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of state concern that public entities be provided flexibility in the development of systems of registration and control over system incidents, so as to accommodate differing impacts. It is a purpose of this part to provide for the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations.

History: En. Sec. 3, Ch. 364, L. 1983.

17-5-1104. Construction. This part must be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations.

History: En. Sec. 14, Ch. 364, L. 1983.

Cross-References

Transfer of obligation, Title 28, ch. 1, part 10.

U.C.C. — investment securities, Title 30, ch. 8.

17-5-1105. Applicability — election — rescission. (1) Public obligations may be issued as certificated or uncertificated public obligations as provided in this part, notwithstanding provisions of law providing for issuance in other forms. Whenever bonds are issued under this part, the provisions of this part are alternative and supplemental to such other provisions.

(2) Nothing in this part limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) The provisions of this part may be applied to obligations that have previously been approved by vote, referendum, or hearing, authorizing or permitting the authorization of obligations in bearer and registered form or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum, or hearing for the purpose of authorizing or permitting the authorization of obligations in registered form only.

History: En. Sec. 13, Ch. 364, L. 1983.

17-5-1106. Records — no public inspection — locations. (1) With regard to the ownership or pledge of public obligations, records are not subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records.

(2) Registration records of the issuer may be maintained at locations inside or outside this state determined by the issuer.

History: En. Sec. 12, Ch. 364, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to inspect and copy public records, 2-6-102, 2-6-104.

17-5-1107 through 17-5-1110 reserved.

17-5-1111. System of registration. (1) Each issuer is authorized to establish and regularly maintain a system of registration with respect to each public obligation that it issues. The system may be either a system pursuant to which only certificated public obligations are issued or a system pursuant to which both certificated and uncertificated public obligations are issued. The issuer may discontinue and reinstitute either system from time to time.

(2) The system must be established and regularly maintained or amended, discontinued, or reinstituted for the issuer by the official or official body.

(3) The system must be described in the official actions that provide for original issuance and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer that is established by the official or official body.

(4) The system must define the method or methods by which transfer of the public obligations is effective with respect to the issuer, which method or methods are exclusive (substantial compliance being essential to a valid transfer) and by which payment of principal and any interest must be made. The system may permit the issuance of public obligations in any denomination to represent several public obligations of smaller denominations. The system may also provide for the form of any certificated public obligations, for differing record and payment dates, for varying denominations, and for accounting, canceled certificate destruction, and other incidental matters.

(5) Under a system pursuant to which both certificated and uncertificated public obligations are issued, both types of public obligations may be regularly issued or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners. Under a system pursuant to which uncertificated public obligations are regularly issued, provisions may be made for registration of pledges and releases.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions and the effect of such on the exemption of interest from the income tax provided for by the code.

(7) If the effect of a conversion from one of the forms of public obligations provided for in this part to a form not provided for in this part is that interest will continue to be exempt from the income tax provided for by the code, this part does not preclude such conversion.

(8) To the extent not inconsistent with this part, the rights provided by other laws with respect to obligations in other forms must be provided with respect to obligations in forms that may be used under this part.

History: **En. Sec. 4, Ch. 364, L. 1983.**

17-5-1112. Certificated public obligation — execution — authentication. (1) A certificated public obligation must be executed by the issuer by:

(a) the signing by an authorized officer with the manual signature of such officer; or

(b) the signing by such officer with a facsimile signature in lieu of the manual signature of such officer.

(2) Each certificated public obligation may, in addition to the signature or signatures of an authorized officer or officers, have placed upon it a certificate or certificates as authenticating trustee, registrar, transfer agent, or the like. Such certificate may be signed by the manual signature of an individual or by a facsimile signature in lieu of a manual signature, provided that at least one certificate is signed by a manual signature.

(3) The certificated public obligation must bear the manual signature of either:

(a) an authorized officer as defined in 17-5-1102; or

(b) a person described in subsection (2).

History: **En. Sec. 5, Ch. 364, L. 1983.**

17-5-1113. Certificated public obligation — signatures. (1) No certificated public obligation signed by the authorized officers at the time of the signing is invalid or without binding effect even though before the issuance thereof any or all of such officers have ceased to fill their respective offices.

(2) Any authorized officer employed to sign any certificated public obligation may adopt as and for the signature of the officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated public obligation.

History: **En. Sec. 6, Ch. 364, L. 1983.**

17-5-1114. Certificated public obligation — seal. When a seal is required or permitted in the execution of any certificated public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

History: **En. Sec. 7, Ch. 364, L. 1983.**

17-5-1115. Uncertificated public obligation — signed statements. The issuer shall provide, with respect to its uncertificated public obligations, for the sending of written statements that provide a record of certain rights as of the time of issuance of the statements. The statements must be sent to each person acquiring rights by registration in uncertificated public obligations, and the statements so sent must be signed by an authorized officer or by a person whose signature is required or permitted to be placed on a certificated public obligation of the same class or series. Statements, as such, confer no right on the recipient. Statements are neither a negotiable instrument nor a security.

History: **En. Sec. 8, Ch. 364, L. 1983.**

17-5-1116 through 17-5-1120 reserved.

17-5-1121. Agents — depositories. (1) An issuer may appoint for a term as may be agreed, including for so long as a public obligation may be outstanding, corporate or other authenticating trustees, transfer agents, registrars, or paying or other agents and specify their rights, compensation, and duties, limit their liabilities, and provide for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to a financial intermediary. No trustee, transfer agent, registrar, paying or other agent need have an office or do business within this state.

(2) An issuer may enter into agreements with custodian banks and financial intermediaries, and nominees of any of them, in connection with the establishment and maintenance by others of a central depository system for the transfer or pledge of public obligations. The custodian banks, financial intermediaries, and nominees may, if qualified and acting as fiduciaries, also serve as authenticating trustees, transfer agents, registrars, or paying or other agents of the issuer with respect to the same issue of public obligations.

History: **En. Sec. 9, Ch. 364, L. 1983.**

17-5-1122. Costs — collection. (1) An issuer, prior to or at original issuance, may provide as a part of a system of registration that the transferor or transferee of the public obligations pay all or a designated part of the costs of the system, that costs be paid out of the proceeds of the public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid by the transferor or transferee or out of proceeds is the liability of the issuer.

(2) The issuer may as a part of the system provide for reimbursement or for satisfaction of its liability by payment by others. The issuer may enter into agreements with others respecting reimbursement or payment, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of the fees and charges must be reimbursed or paid from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation.

History: **En. Sec. 10, Ch. 364, L. 1983.**

17-5-1123. Deposits for security. Whenever under any law of this state a deposit of public obligations is authorized as security, public obligations otherwise meeting the authorized criteria may be deposited and must be accepted as security, provided that:

(1) in the case of a certificated public obligation, the instrument is assigned to the holder of the deposit; and

(2) in the case of an uncertificated public obligation, registration of a pledge is authorized by the system and the pledge of the uncertificated obligation is registered.

History: **En. Sec. 11, Ch. 364, L. 1983.**

Cross-References

State and local bonds and warrants as security for deposits of public funds, 17-6-103.

Parts 12 through 14 reserved

Part 15

Economic Development Bonds

17-5-1501. Short title. This part shall be known and may be cited as the "Montana Economic Development Bond Act of 1983".

History: **En. Sec. 1, Ch. 701, L. 1983.**

17-5-1502. Legislative declaration. (1) It is the policy of the state of Montana, in the interest of promoting the health, safety, and general welfare of all the people of the state, to increase job opportunities and to retain existing jobs by making available, through the economic development board, funds for industrial, commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is the basic source of job opportunities;

(b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and

(c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business.

History: **En. Sec. 2, Ch. 701, L. 1983.**

17-5-1503. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board created in 2-15-1805.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment

company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(6) "Major project" means a project whose cost or appraised value exceeds $800,000.

(7) "Project" means a project as defined in 90-5-101.

(8) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction.

History: **En. Sec. 1, Ch. 686, and Sec. 3, Ch. 701, L. 1983.**

17-5-1504. Powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in this part;

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of this part;

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out this part;

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and this part.

History: En. Sec. 2, Ch. 686, and Sec. 4, Ch. 701, L. 1983.

17-5-1505. Financing programs of the board. (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board; or

(c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state.

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

History: **En. Sec. 3, Ch. 686, and Sec. 5, Ch. 701, L. 1983.**

17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds shall bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds outstanding at any one time [for projects other than major projects], except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $25 million.

(7) The total amount of bonds outstanding at any one time for major projects, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $50 million.

History: En. Sec. 4, Ch. 686, and Sec. 6, Ch. 701, L. 1983.

Compiler's Comments

Composite Section: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Subsection (6) is from sec. 6, Ch. 701, L. 1983, which had no provision for major projects. The compiler inserted the bracketed language in (6) to clarify that the amount of outstanding bonds in (6) relates only to projects other than major projects. Subsection (7) is from sec. 4, Ch. 686, L. 1983.

17-5-1507. Bond anticipation notes — issuance — payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds. The notes shall be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. The notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

History: **En. Sec. 5, Ch. 686, and Sec. 7, Ch. 701, L. 1983.**

17-5-1508. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for debt service funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

History: En. Sec. 6, Ch. 686, and Sec. 8, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 281, in (4), substituted "debt service funds" for "sinking funds".

17-5-1509. Personal liability. The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: En. Sec. 7, Ch. 686, and Sec. 9, Ch. 701, L. 1983.

17-5-1510. Purchase of notes and bonds — cancellation. The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: En. Sec. 8, Ch. 686, and Sec. 10, Ch. 701, L. 1983.

17-5-1511. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

History: En. Sec. 9, Ch. 686, and Sec. 11, Ch. 701, L. 1983.

17-5-1512. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. Sec. 10, Ch. 686, and Sec. 12, Ch. 701, L. 1983.

17-5-1513. Signatures of board members. If board members whose signatures appear on notes, bonds, or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

History: En. Sec. 11, Ch. 686, and Sec. 13, Ch. 701, L. 1983.

17-5-1514. Accounts. The board may create funds and accounts necessary to implement this part. The funds and accounts may include:

(1) a fund into which bond proceeds are deposited;

(2) a common bond fund consisting of:

(a) a common debt service account;

(b) a capital reserve account as provided in 17-5-1515; and

(c) an operating account for defraying the operational costs of the board; and

(3) other funds or accounts.

History: En. Sec. 12, Ch. 686, and Sec. 14, Ch. 701, L. 1983; amd Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

Composite Section — 1983 Amendment: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Section 12, Ch. 686, L. 1983, contained only the first sentence of 17-5-1514 which was identical to the first sentence of sec. 14, Ch. 701, L. 1983. Compiler has codified section as set forth in sec. 14, Ch. 701, L. 1983, as there is no conflict between the sections.

Chapter 281, in (1), substituted "a fund" for "a bond proceeds fund".

17-5-1515. Reserve funds and appropriations. (1) The board may establish a capital reserve account and pay into it any:

(a) funds appropriated and made available by the state for the purpose of the account;

(b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

History: En. Sec. 13, Ch. 686, and Sec. 15, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service fund" for "sinking fund" in two places.

17-5-1516. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: **En. Sec. 14, Ch. 686, and Sec. 16, Ch. 701, L. 1983.**

17-5-1517. Refunding obligations. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of this part that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

History: **En. Sec. 15, Ch. 686, and Sec. 17, Ch. 701, L. 1983.**

17-5-1518. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: **En. Sec. 16, Ch. 686, and Sec. 18, Ch. 701, L. 1983.**

17-5-1519. Project guaranty program. (1) The board may guarantee and make commitments to guarantee payment required by a loan, lease, or other credit arrangement for any project funded under this part or under 90-5-101 through 90-5-112, upon such terms and conditions as the board may prescribe in accordance with this part. In administering the guaranty program, the board may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, regulations, and guidelines.

(2) Guaranties by the board under this part must:

(a) be made for a project which the board finds meets the policies and objectives of this part;

(b) be made to an applicant for a guaranty approved by the board;

(c) contain amortization provisions satisfactory to the board; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes, assessments, delinquency charges, and default remedies as the board determines to be necessary.

(3) The board is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the economic development guaranty fund and any guaranteed loan lease or other credit agreement. Any such agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under this part.

(4) Any contract of guaranty made by the board under the authorization of this part must provide that claims payable thereunder must be paid from any amounts available in the economic development guaranty fund and from any amounts available under the terms of any applicable contract or agreement with the financial institution which originated the guaranteed loan. The obligation of the board to make payments under any such contract is limited solely to such sources and does not constitute a debt or liability of the state. Any guaranty contract and any rule, regulation, or guideline of the board implementing the guaranty program may contain such other terms, provisions, or conditions as the board considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of this part may be determined on such basis and be payable by such person in such amounts and at such times as the board determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

History: **En. Sec. 17, Ch. 686, and Sec. 19, Ch. 701, L. 1983.**

17-5-1520. Economic development guaranty fund. (1) The board shall create an economic development guaranty fund. The fund must be held by a trustee or other fiduciary designated by the board. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the board considers necessary to comply with any contract or agreement entered into by the board under this part. The board may borrow from and deposit in the economic development guaranty fund up to $7.5 million from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan, lease, or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the board in accordance with guaranty contracts with financial institutions entered into pursuant to this part, including without limitation the protection of the interest of the board in projects during periods of delinquency or upon default.

(3) The minimum reserve requirement for the economic development guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under this part, but not in excess of the aggregate annual payments due under the loans, leases, or other credit agreements guaranteed by the board. No loan, lease, or other credit agreement may be guaranteed by the board if the amount of money available in the economic development guaranty fund would be less than the minimum reserve requirement.

(4) In order to assure the maintenance of the economic development guaranty fund, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the economic development guaranty fund to the minimum reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the economic development guaranty fund to the minimum reserve requirement.

(5) All amounts remitted to the board under this section constitute loans to the board and must be repaid to the state treasury without interest from available operating revenues of the board in excess of amounts required for the guarantee of loans.

History: En. Sec. 18, Ch. 686, and Sec. 20, Ch. 701, L. 1983.

Compiler's Comments

Composite Section: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Subsection (1) of sec. 18, Ch. 686, L. 1983, provided for borrowing up to $5 million for deposit in the guaranty fund to back the $50 million in bonds for major projects authorized in sec. 4, Ch. 686, L. 1983. Section 20, Ch. 701, L. 1983, provided for borrowing up to $2.5 million for deposit in the guaranty fund to back the $25 million in bonds for projects authorized in sec. 6, Ch. 701, L. 1983. The compiler has combined the two amounts to maintain the 10% ratio of borrowing for the guaranty fund to the total of outstanding bonds.

17-5-1521. Adoption of rules. (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with 17-5-1526 and 17-5-1527; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of 17-5-1502; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under this part;

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

History: **En. Sec. 19, Ch. 686, and Sec. 21, Ch. 701, L. 1983.**

17-5-1522. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: **En. Sec. 20, Ch. 686, and Sec. 22, Ch. 701, L. 1983.**

17-5-1523. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

History: **En. Sec. 21, Ch. 686, and Sec. 23, Ch. 701, L. 1983.**

17-5-1524. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

(2) When personal property owned by the board is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may be made only on personal property against which such taxes were levied.

History: **En. Sec. 22, Ch. 686, and Sec. 24, Ch. 701, L. 1983.**

17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through 17-5-1529 are securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

History: En. Sec. 23, Ch. 686, and Sec. 25, Ch. 701, L. 1983.

17-5-1526. Procedure prior to financing projects. (1) The board may finance projects [other than major projects] under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519; and

(e) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

History: En. Sec. 26, Ch. 701, L. 1983.

Compiler's Comments

Compiler Clarification: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Section 24, Ch. 686, L. 1983

(17-5-1527), provided for the procedure prior to financing major projects. Section 26, Ch. 701, L. 1983 (17-5-1526), dealt with the procedure prior to financing projects. Since Ch. 701 did not deal with major projects, the compiler has inserted the bracketed language in 17-5-1526(1) for clarification.

17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519; and

(e) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

History: En. Sec. 24, Ch. 686, L. 1983.

17-5-1528. Validity of pledge. Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

History: **En. Sec. 25, Ch. 686, and Sec. 27, Ch. 701, L. 1983.**

17-5-1529. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

History: **En. Sec. 26, Ch. 686, and Sec. 28, Ch. 701, L. 1983.**

Part 16

Municipal Finance Consolidation Act

17-5-1601. Short title. This part shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

History: **En. Sec. 1, Ch. 620, L. 1983.**

17-5-1602. Policy and purpose. (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by counties, cities, towns, school districts, special taxing districts, and other public bodies to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of local public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of this part to promote the policies stated in subsection (1) by:

(a) creating a means for public bodies to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

History: **En. Sec. 2, Ch. 620, L. 1983.**

17-5-1603. Liberal construction. This part and the powers granted in this part must be liberally construed to effectuate the policies and purposes stated in this part.

History: **En. Sec. 3, Ch. 620, L. 1983.**

17-5-1604. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the Montana economic development board created in 2-15-1805.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other special taxing district.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630.

History: **En. Sec. 4, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted reference to the Montana Economic Development Board for reference to the Board of Investments.

17-5-1605. Board of investments to implement. The board of investments may make and enforce orders, rules, and bylaws that are necessary or desirable for the implementation of this part.

History: **En. Sec. 5, Ch. 620, L. 1983.**

17-5-1606. Bonds, bond anticipation notes, and notes of the board. (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to local government units and its purchases of their bonds and notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time:

(a) issue notes to renew notes and bonds to pay notes, including interest;

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this part, issue temporary notes and renewal notes.

(4) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be an obligation of the board payable out of any revenues, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(5) The notes and bonds must be authorized by resolutions of the board, shall bear a date, and shall mature at times as the resolutions provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates; be in denominations; be in a form, either coupon or registered; carry registration privileges; be executed in a manner; be payable in a medium of payment, at places inside or outside the state; and be subject to terms of redemption as provided in resolutions of the board. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

History: **En. Sec. 6, Ch. 620, L. 1983.**

17-5-1607. Participation voluntary. Use of the financing mechanism created by this part is entirely voluntary, and no local government unit may be required to sell its bonds, bond anticipation notes, or notes to the board.

History: **En. Sec. 7, Ch. 620, L. 1983.**

17-5-1608. Limitations on amounts. The board may not:

(1) make any loans to or purchase the bonds or notes of any single local government unit in an amount greater than $500,000 per single loan, bond issue, or note; or

(2) issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to fund or refund other outstanding bonds or notes) to exceed $25 million.

History: En. Sec. 8, Ch. 620, L. 1983.

17-5-1609. Purchase of anticipation notes. Notwithstanding any other provision of law, a local government unit may issue and the board may purchase notes in anticipation of an otherwise authorized sale of municipal securities. In connection with any purchase of anticipation notes, the board may by agreement with the local government unit impose terms, conditions, and limitations that in the board's opinion are proper under the circumstances and for the purposes and security of the board and the holders of its bonds or notes.

History: En. Sec. 9, Ch. 620, L. 1983.

17-5-1610. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued to or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds of refunding obligations may be invested as provided in Title 17, chapter 6.

History: En. Sec. 10, Ch. 620, L. 1983.

17-5-1611. Additional powers of the board. In addition to all other powers conferred on the board by this part or any other law, the board has the power:

(1) to purchase or hold municipal bonds, bond anticipation notes, or notes at prices and in a manner the board considers advisable;

(2) to sell municipal bonds, bond anticipation notes, or notes acquired or held by it at prices without relation to cost and in a manner the board considers advisable;

(3) to invest funds or money acquired by the board as provided in 17-5-1641;

(4) to prescribe the form of application or procedure required of a local government unit for a loan or purchase of its municipal bonds, bond anticipation notes, or notes; fix the terms and conditions of the loan or purchase; and enter into agreements with local government units with respect to loans or purchases;

(5) to render services to local government units in connection with public or private sales of their municipal bonds, bond anticipation notes, or notes that are eligible for purchase by the board under this part, including advisory and other services, and charge the local government units for such services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to a local government unit or a proposed purchase by the board of municipal bonds, bond anticipation notes, or notes of the local government unit, whether or not the loan is made or the municipal bonds, bond anticipation notes, or notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of municipal bonds, bond anticipation notes, or notes by the board, including:

(a) the date and maturities of the bonds, bond anticipation notes, or notes;

(b) provisions as to redemption or payment before maturity; and

(c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;

(8) in connection with any loan to a local government unit or purchase of municipal bonds, bond anticipation notes, or notes of a local government unit, to consider:

(a) the lawfulness and validity of the purpose to be served by the loan or purchase;

(b) the ability of the local government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the local government unit to repay the loan, notes, or bonds;

(d) the priority of need for the particular public improvement or purpose to be financed; and

(e) varying the terms and conditions of its loans or purchases as between various local government units in accordance with their respective priorities and credit worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out this part;

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay such compensation for their services as the board may determine;

(12) to procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security

for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this part.

History: En. Sec. 11, Ch. 620, L. 1983.

17-5-1612 through 17-5-1620 reserved.

17-5-1621. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions that must be a part of the contract or contracts with the holders thereof as to:

(1) pledging all or any part of the revenue or funds of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) the setting aside of reserves for debt service funds in the possession of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(3) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(4) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(5) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(6) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department and to maintain suitable facilities and services for the purpose of carrying out its programs;

(7) vesting in a trustee such property, rights, powers, and duties in trust as the board determines; and

(8) defining the acts or omissions that constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of this part.

History: En. Sec. 12, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service funds" for "sinking funds".

17-5-1622. Validity of pledge. A pledge by the board is valid and binding from the time the pledge is made. The revenues, money, or property pledged and thereafter received by the board is immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. Sec. 13, Ch. 620, L. 1983.

17-5-1623. Nonimpairment by the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and a local government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 14, Ch. 620, L. 1983.

17-5-1624. Trust indenture. (1) In the discretion of the board, the bonds or notes of the board may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the general overhead cost of the board.

History: En. Sec. 15, Ch. 620, L. 1983.

17-5-1625. Presumption of validity. After issuance, all bonds or notes of the board are conclusively presumed to be fully authorized by and issued under all the laws of this state and any person or governmental unit is estopped from questioning their proper authorization, sale, issuance, execution, or delivery by the board.

History: En. Sec. 16, Ch. 620, L. 1983.

17-5-1626. Signatures of board members. If any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes as if the members had remained in office until delivery.

History: En. Sec. 17, Ch. 620, L. 1983.

17-5-1627. Negotiability of bonds or notes. Notwithstanding any other provisions of law, a bond or note issued under this part is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9, and a holder or owner of a bond or note or of a coupon appurtenant to it, by accepting the bond, note, or coupon, is conclusively presumed to have agreed that the bond, note, or coupon is fully negotiable for all purposes of the Uniform Commercial Code.

History: En. Sec. 18, Ch. 620, L. 1983.

17-5-1628. Bonds or notes as legal investments. Notwithstanding the restrictions of any other law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest debt service funds, money, or other funds belonging to them or within their control in bonds or notes issued under this part.

History: En. Sec. 19, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 281, near end of section, substituted "debt service funds" for "sinking funds".

17-5-1629. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 20, Ch. 620, L. 1983.

17-5-1630. Reserve fund. (1) The board shall establish and maintain a municipal finance consolidation act reserve fund, to which there shall be deposited or transferred:

(a) all money appropriated by the legislature for the purposes of the fund in accordance with the provisions of subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the debt service fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of this part, but not to any other fund or account.

(4) Nothing in this section creates a debt or liability of the state.

(5) Notwithstanding any provision of Title 17, chapter 6, the board of investments may lend money for deposit to the reserve fund in an amount equal to any deficiency in the required debt service reserve. The loans shall be made on such reasonable terms and conditions as the board considers proper and as may be agreed upon between the board and the board of investments, including without limitation terms and conditions providing that the loans need not be repaid until the obligations of the board secured and to be secured by the reserve fund are no longer outstanding.

History: En. Sec. 21, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service fund" for "sinking fund" in two places.

17-5-1631. Additional funds and accounts. The board may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this part or to comply with the provisions of any of its agreements or resolutions.

History: En. Sec. 22, Ch. 620, L. 1983.

17-5-1632 through 17-5-1640 reserved.

17-5-1641. Investment. (1) Unless otherwise required by a resolution or agreement of the board, the board may invest funds coming under its control pursuant to this part in the same manner as permitted for investment of funds belonging to the state or held by the state treasurer.

(2) Funds from several or all accounts may be combined for investment, and any interest earned shall be prorated and credited to the various contributing accounts on the basis of the amounts thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle. Such proration must be calculated at least once a year or upon a specific request made to the board.

(3) All securities purchased by the board as an investment remain in the custody of the state treasurer until the same are sold, exchanged, retired, or mature and are paid.

History: En. Sec. 23, Ch. 620, L. 1983.

17-5-1642. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a liability or obligation or a pledge of the faith and credit of the state but are payable solely from revenues or funds of the board generated or received for purposes of this part. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: **En. Sec. 24, Ch. 620, L. 1983.**

17-5-1643. Sale or exchange of municipal securities. (1) Notwithstanding any law applicable to or constituting any limitation on the maximum rate of interest per year payable on bonds or notes or to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, every local government unit is authorized to contract to pay interest on or an interest cost per year for money borrowed from the board and evidenced by its municipal securities purchased by the board without regard to any statutory limitations as to rate of interest per year payable or as to annual interest cost to maturity of money borrowed by the local government unit. Every local government unit is authorized to contract with the board with respect to the loan or purchase, and the contract must contain the terms and conditions of such loan or purchase. Every local government unit is authorized to pay fees and charges required to be paid to the board for its services.

(2) Notwithstanding any law applicable to or constituting any limitation on the sale of bonds or notes except the limitation on amount of bonded indebtedness, any local government unit may sell bonds or notes to the board by private negotiated sale, without limitation as to denomination. The bonds or notes may be fully registered or registerable as to principal only or in bearer form or may bear interest at the rate or rates, all in accordance with this section. The bonds or notes may be evidenced in the manner and may contain other provisions not inconsistent with this part and may be sold to the board without advertisement at the price or prices as may be determined, all as provided in the proceedings of the governing body of the local government unit pursuant to which the bonds or notes are authorized to be issued. The governing body of the local government unit may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner provided in the proceedings authorizing their issuance. The bonds in changed form or denominations must be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid and the bonds in changed form or denominations bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged. If any exchange is made under this subsection, the bonds surrendered by the holders at the time of the exchange must be canceled. The exchange may be made only at the request of the holders of the bonds to be surrendered. The local government unit may require all expenses incurred in connection with the exchange to be paid by the holders.

History: **En. Sec. 25, Ch. 620, L. 1983.**

17-5-1644. Care and custody of bonds purchased by the board. The board may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the board, for rendering services in connection with:

(a) the care, custody, or safekeeping of municipal bonds or other investments held or owned by the board pursuant to this part;

(b) the payment or collection of amounts payable as to principal or interest; and

(c) the delivery to the board of municipal bonds or other investments purchased by it or sold by it pursuant to this part;

(2) pay the cost of those services; and

(3) also, in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its municipal bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, in the opinion of the board, is necessary or desirable.

History: **En. Sec. 26, Ch. 620, L. 1983.**

17-5-1645. Insurance or guaranty. The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on municipal bonds, bond anticipation notes, or notes of local government units purchased or held by the board.

History: **En. Sec. 27, Ch. 620, L. 1983.**

17-5-1646. Default in payment. If the board or local government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board or local government unit fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in this part.

History: **En. Sec. 28, Ch. 620, L. 1983.**

17-5-1647. Powers and duties of trustee on default. (1) A trustee appointed under 17-5-1646 may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or local government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments, and to require the board or local government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under this part;

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or local government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

(e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

(2) The trustee, in addition to the powers stated in subsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or bonds due and payable, the trustee must give 30 days' notice in writing to the governor, the attorney general, and the board or local government unit defaulting.

History: En. Sec. 29, Ch. 620, L. 1983.

17-5-1648. Exemption from execution and sale. All property of the board, other than its revenues or funds received pursuant to this part, is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against such property. A judgment against the board constitutes a charge or lien upon such property.

History: En. Sec. 30, Ch. 620, L. 1983.

17-5-1649. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

History: En. Sec. 31, Ch. 620, L. 1983.

17-5-1650. Annual report. By September 1 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of such activities for the next year, and a comparison of such activities during the previous year with the estimates of those activities that were made in the previous annual report.

History: En. Sec. 32, Ch. 620, L. 1983.

17-5-1651. Limitations on board's power. Under this part the board may not:

(1) make loans of money to any person, firm, or corporation other than a local government unit or purchase securities issued by any person, firm, or corporation other than a local government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of commerce, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state.

History: **En. Sec. 33, Ch. 620, L. 1983.**

CHAPTER 6

DEPOSITS AND INVESTMENTS

Part 1 — Deposits

Section
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17-6-104. Interest on deposits — conformity with federal law.
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17-6-315. Service charges.
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17-6-321. Audit and performance evaluation.
17-6-322. Reports and publications.
17-6-323. Report on potential uses of coal tax trust fund.
17-6-324. Rulemaking authority.
17-6-325 through 17-6-330 reserved.
17-6-331. Establishment of a Montana economic development fund.

Part 1

Deposits

Part Cross-References

Deposit of public funds by county, city, or town, 7-6-201 through 7-6-212.

17-6-101. Deposit of funds in the hands of the state treasurer. (1) Under the direction of the board of investments, the state treasurer shall deposit public moneys in his possession and under his control in solvent banks, building and loan associations, and savings and loan associations located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) The state treasurer shall deposit funds in such banks, building and loan associations, and savings and loan associations and in such amounts as may be designated by the board of investments and withdraw such deposits when instructed to by the board of investments.

(3) When moneys have been deposited under the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any such deposit occuring from any cause other than his own neglect or fraud.

(4) The state treasurer shall withdraw all deposits or any part thereof from time to time to pay and discharge the legal obligations of the state duly presented to him in accordance with the law.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(part).

Cross-References

Giving security for deposit prohibited — exceptions, 32-1-447.

17-6-102. Insurance on deposits. (1) No such deposits in excess of the amount insured by the federal deposit insurance corporation or federal savings and loan insurance corporation shall be made unless the bank, building and loan association, and savings and loan association first delivers to the state treasurer or deposits in trust with some solvent bank, as hereinafter provided, as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to at least 50% of the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, and savings and loan association pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1) above. If the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward

by registered or certified mail to the state treasurer and to the depository bank a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(2), (4); amd. Sec. 2, Ch. 158, L. 1979.

Cross-References

Giving security for deposit prohibited — exceptions, 32-1-447.

17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration;

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable for such revenues during the outstanding term of such bonds;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3) and

7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state;

(10) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(11) bonds issued pursuant to Title 7, chapter 12, parts 21 and 41;

(12) bonds issued pursuant to Title 90, chapter 6, part 1;

(13) revenue bonds issued by any unit of the university system of the state of Montana; and

(14) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow.

History: Ap. p. Sec. 4, Ch. 298, L. 1973; amd. Sec. 2, Ch. 160, L. 1975; amd. Sec. 1, Ch. 92, L. 1977; Sec. 79-307, R.C.M. 1947; Ap. p. Sec. 2, Ch. 5, Ex. L. 1933; amd. Sec. 2, Ch. 37, L. 1935; re-en. Sec. 5309.36, R.C.M. 1935; amd. Sec. 109, Ch. 431, L. 1975; Sec. 35-145, R.C.M. 1947; R.C.M. 1947, 35-145, 79-307; amd. Sec. 3, Ch. 158, L. 1979; amd. Sec. 1, Ch. 185, L. 1979; amd. Sec. 1, Ch. 437, L. 1979; amd. Sec. 5, Ch. 540, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (7).

Cross-References

Deposit security, 7-6-207.

Investment of certain money in county warrants, 7-6-2701.

Call for payment of warrants drawing interest, 7-6-4502.

Investment of municipal money in city or town warrants, 7-6-4603.

Authorization for additional indebtedness for water or sewer systems, 7-7-108.

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Municipal revenue bonds, Title 7, ch. 7, part 44.

Public obligations as authorized security, 17-5-1123.

Surety defined, 28-11-401.

What real property may be mortgaged — debts secured, 71-1-201.

Trust indenture considered to be mortgage on real property, 71-1-305.

17-6-104. Interest on deposits — conformity with federal law. (1) The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, and savings and loan associations and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, federal savings and loan insurance corporation, or any other fiscal

agency of the United States of which the banks, building and loan associations, or savings and loan associations of this state may be members or debtors.

History: (1)En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; Sec. 79-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1937; amd. Sec. 2, Ch. 14, L. 1974; Sec. 79-302, R.C.M. 1947; R.C.M. 1947, 79-301(part), 79-302; amd. Sec. 6, Ch. 540, L. 1979.

Cross-References

Banks may join federal reserve bank, 32-1-373.

Claims — order of payment — priorities, 32-1-534.

17-6-105. State treasurer as treasurer of state agencies — deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, or savings and loan associations located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Such bank, building and loan association, or savings and loan association shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits shall be made in the name of the state treasurer, shall be subject to withdrawal at his option, and shall draw interest as other state money, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

(6) All money, credits, evidences of indebtedness, and securities received by a state agency or institution shall be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All money, credits, evidences of indebtedness, and securities collected shall be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

History: (1) thru (6)En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1931; re-en. Sec. 192, R.C.M. 1935; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973; amd. Sec. 3, Ch. 14, L. 1974; amd. Sec. 4, Ch. 286, L. 1977; Sec. 79-306, R.C.M. 1947; (7)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971, amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 79-306, 82-110(5); amd. Sec. 4, Ch. 158, L. 1979.

Cross-References

Unified investment program — general provisions, 17-6-201.

Investment funds — general provisions, 17-6-202.

Part 2

Investments

Part Cross-References

Board of Investments to invest:

Public funds, Art. VIII, sec. 13, Mont. Const.

Coal tax revenues, 90-6-211.

17-6-201. Unified investment program — general provisions. (1) The uniform investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments and the Montana economic development board in accordance with the rules provided in this chapter and with that degree of judgment and care, under circumstances from time to time prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived, and preservation of purchasing power of capital during periods of sustained high monetary inflation. Investments by the Montana economic development board are limited to those made from the Montana in-state investment fund and for the purposes set forth in part 3.

(2) All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments has the sole authority to invest state funds other than the Montana in-state investment fund. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(4) The board of investments shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made; and

(d) prepare the claim to pay for the investment.

(5) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(6) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time

to time such reports with reference thereto as may be directed by the board of investments.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds.

History: (1), (2), (5) thru (7)En. Sec. 5, Ch. 298, L. 1973; amd. Sec. 1, Ch. 203, L. 1977; Sec. 79-308, R.C.M. 1947; (3), (4)En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; Sec. 82A-204, R.C.M. 1947; R.C.M. 1947, 79-308, 82A-204(4); amd. Sec. 1, Ch. 395, L. 1981; amd. Sec. 11, Ch. 281, L. 1983; amd. Sec. 19, Ch. 677, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 281, in (7), changed "trust and legacy fund" to "nonexpendable trust funds".

Chapter 677, in middle of (1) following "funds shall be administered by the board of investments" inserted "and the Montana economic development board", and substituted "people of prudence" for "men of prudence"; inserted last sentence of (1); in (3) inserted "other than the Montana in-state investment fund" after "The board of investments has the sole authority to invest state funds"; and in (4) substituted "board of investments" for "board".

1981 Amendment: Added "and preservation of purchasing power of capital during periods of sustained high monetary inflation" at the end of (1) (now end of first sentence).

Cross-References

Accurate accounting records and interaccount loans, 17-2-107.

U.C.C. — secured transactions — sales of accounts, contract rights, and chattel paper, Title 30, ch. 9.

Proceedings in foreclosure suits, 71-1-222.

17-6-202. Investment funds — general provisions. (1) For each treasury fund account into which state funds are segregated by the department of administration pursuant to 17-2-106, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department.

(2) However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest, or devise from which the fund account originates to be invested shall be pooled in an account to be designated "treasury cash account" and placed in one of the investment funds designated in 17-6-203. The share of the income for this account shall be credited to the general fund.

(3) If, within the list in 17-6-203 of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata.

History: En. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; R.C.M. 1947, 79-309(part).

Cross-References

Accurate accounting records and interaccount loans, 17-2-107.

17-6-203. Separate investment funds. Separate investment funds shall be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution and all money referred to in 17-2-102(8). The principal and any part

thereof of each and every fund constituting the Montana nonexpendable trust fund type shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 4; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust fund shall be permanent and invested in the permissible investments enumerated in 17-6-211; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(6) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: Ap. p. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; Sec. 79-309, R.C.M. 1947; Ap. p. Sec. 12, Ch. 70, L. 1929; re-en. Sec. 5668.30, R.C.M. 1935; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973; Sec. 79-1212, R.C.M. 1947; R.C.M. 1947, 79-309(part), 79-1212; amd. Sec. 12, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), changed "trust and legacy fund" to "nonexpendable trust funds"; and in last sentence of (1), after "each and every", substituted "fund constituting the Montana nonexpendable trust fund type" for "subfund constituting the Montana trust and legacy fund" and near end, changed "subfund" to "fund".

Cross-References

Disposal of severance taxes, 15-35-108.

17-6-204. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973; R.C.M. 1947, 79-311.

Cross-References

Maintenance of fund and account records and interfund loans, 17-2-105.

Accurate accounting records and interaccount loans, 17-2-107.

17-6-205 through 17-6-210 reserved.

17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (1)(b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of highest quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (1)(c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, savings and loan associations, and credit unions located in Montana; provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property as provided in this subsection (1)(f) and subsection (5), provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund; and

(g) any other investment in any business activity in the state, including activities that continue existing jobs or create new jobs in Montana, provided that investments which do not meet the requirements of subsections (1)(a) through (1)(f) may not, in the aggregate, exceed 10% of the fund from which each such investment is made.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (3)(c) does not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(5) The board may invest in mortgage loans financed by the board of housing if the mortgages are not in default and meet the requirements of subsection (1)(f). The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers.

(6) The Montana economic development board created in 2-15-1805 may invest the Montana in-state investment fund in any in-state investment authorized by its rules in addition to those investments authorized by this section.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974; amd. Sec. 1, Ch. 316, L. 1977; R.C.M. 1947, 79-310; amd. Sec. 1, Ch. 81, L. 1979; amd. Sec. 1, Ch. 180, L. 1979; amd. Sec. 2, Ch. 395, L. 1981; amd. Sec. 1, Ch. 358, L. 1983; amd. Sec. 1, Ch. 360, L. 1983; amd. Sec. 1, Ch. 387, L. 1983; amd. Sec. 20, Ch. 677, L. 1983.

Compiler's Comments

1983 Amendments — Composite: Chapter 358, near beginning of (1)(c) before "quality", changed "prime" to "highest"; and in (1)(c)(ii) after "reporting period," deleted "had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and".

Chapter 360, in (1)(f), inserted "as provided in this subsection (1)(f) and subsection (5)"; and inserted (5).

Chapter 387, in (1)(e), after "associations" inserted ", and credit unions"; inserted (1)(g).

Chapter 677, in (4), following "to direct", inserted "its portion of"; and inserted (6). The amendment to 17-6-211(6) provided in part: "The Montana economic development board created in [section 19] ...." The board was created in section 19 of HB 100 but when sections 17 and 18 of the bill were deleted prior to passage, section 19 was renumbered as section 17. The reference in (6) was inadvertently not changed. The reference in (6) to 2-15-1805 is the correct reference.

The amendments made by Ch. 677 were effective April 29, 1983. All other amendments were effective October 1, 1983.

1981 Amendment: Deleted former subsection (3)(c) restricting investments in common stock to stocks that have paid cash dividends in each of at least 5 years immediately preceding purchase and to stocks of corporations with aggregate earnings at least equal to aggregate dividends paid and limiting to 2% the assets of a retirement fund that may be invested in stocks that didn't qualify under the above restrictions; increased the percent of book value from 20% to 50% and the percent of one corporation's stock from 1% to 2% in subsection (3)(c); and conformed internal reference in subsection (d) to above-mentioned deletion.

Cross-References

Municipal housing authorities — bonds, Title 7, ch. 15, part 45.

Investment of fund, 19-3-602.

Financial administration of money, 19-4-501.

Investment of retirement account, 19-6-405.

Investment of account, 19-8-403.

U.C.C. — commercial paper, Title 30, ch. 3.
U.C.C. — investment securities, Title 30, ch. 8.
Mortgages of real property, Title 71, ch. 1, part 2.
Montana Health Facility Authority bonds — legal investment, 90-7-113.

17-6-212. State purchase of general fund warrants. (1) The state hereby reserves to itself a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts.

(3) The auditor shall attach to or stamp, write, or print upon each general fund warrant thereafter issued, until warrants totaling the amounts so designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall thereafter when the warrant is presented to him pay it out of the proper fund as designated by the board, and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.

(5) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; re-en. Sec. 1912, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1927; re-en. Sec. 1912, R.C.M. 1935; amd. Sec. 33, Ch. 326, L. 1974; R.C.M. 1947, 79-1101.

Cross-References

Warrants, Title 17, ch. 8, part 3.

17-6-213. Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity.

(2) In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

(3) Payment and redemption of bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail to the proper treasurer together with his receipt.

(4) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated or to grant the right to pay any bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds.

History: En. Sec. 2, Ch. 33, L. 1907; re-en. Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R.C.M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929; re-en. Sec. 1916, R.C.M. 1935; amd. Sec. 36, Ch. 326, L. 1974; R.C.M. 1947, 79-1105.

Cross-References

Redemption of bonds, 7-7-2207.

Redemption of bonds held by state, 7-7-4267.

Redemption of bonds — optional method, 17-5-105.

Redemption of bonds — investment of debt service fund money, 20-9-441.

17-6-214 through 17-6-220 reserved.

17-6-221. Handling securities — custody of mortgages and repurchase agreements. (1) Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination, and a safekeeping receipt may be accepted in lieu of the actual securities.

(2) Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(8).

Cross-References

Examination and supervision by department, 32-1-211.

17-6-222. Repealed. Sec. 1, Ch. 304, L. 1979.

History: En. Sec. 15, Ch. 70, L. 1929; re-en. Sec. 5668.33, R.C.M. 1935; amd. Sec. 38, Ch. 100, L. 1973; amd. Sec. 10, Ch. 298, L. 1973; R.C.M. 1947, 79-1215.

Part 3

Montana In-State Investment

17-6-301. Short title. This act may be cited as the "Montana In-State Investment Act of 1983".

History: En. Sec. 1, Ch. 677, L. 1983.

17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board established in 2-15-1805.

(2) "Clean and healthful environment" means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(3) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(4) "Loan participation" means loans or portions thereof bought from a financial institution.

(5) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(6) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(7) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(8) "Montana in-state investment fund" means the fund established by 17-6-305.

(9) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.

History: **En. Sec. 2, Ch. 677, L. 1983.**

Compiler's Comments

Incorrect Internal References: (1) Section 2(1), Ch. 677, L. 1983, provided: "(1) Board means the Montana economic development board established in [section 19]." The "Board", however, was created in section 17 because sections 17 and 18 of the bill as introduced were deleted, which resulted in section 19 being renumbered as section 17.

(2) Section 2(3), Ch. 677, L. 1983, provided: "(3) Committee means the Economic Development Oversight Committee created by [section 17]." The Economic Development Oversight Committee was deleted from the bill prior to passage and this definition was inadvertently left in the bill. The Code Commissioner therefore has not codified the subsection.

17-6-303. Purpose of the coal tax trust fund. The people of Montana establish that the intent of the permanent coal tax trust fund, as created by Article IX, section 5, of the Montana constitution, is:

(1) to compensate future generations for the loss of a valuable and depletable resource and to meet any economic, social, and environmental impacts caused by coal development not otherwise provided for by other coal tax sources; and

(2) to develop a stable, strong, and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

History: **En. Sec. 1, I.M. No. 95, approved Nov. 2, 1982.**

17-6-304. Use of the coal tax trust fund for economic development. Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

History: **En. Sec. 2, I.M. No. 95, approved Nov. 2, 1982.**

17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy. (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) shall be invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, as required by 17-6-201(1), the long-term benefit to the Montana economy shall be considered.

(3) The legislature may provide additional procedures to implement this section.

History: **En. Sec. 3, I.M. No. 95, approved Nov. 2, 1982.**

17-6-306. Montana in-state investment fund. The Montana in-state investment fund consists of 25% of the revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) and the principal payments on all investments made from the Montana in-state investment fund.

History: **En. Sec. 3, Ch. 677, L. 1983.**

17-6-307. Unified investment program. The Montana economic development board and the board of investments shall hold joint meetings at least twice a year as a unified investment board for purposes of coordinating investment strategies, policies, and programs as required by Article VIII, section 13, of the Montana constitution.

History: **En. Sec. 4, Ch. 677, L. 1983.**

17-6-308. Authorized investments. The Montana in-state investment fund must be invested in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment authorized by rules adopted by the board.

History: **En. Sec. 5, Ch. 677, L. 1983.**

17-6-309. Investment preferences. In deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

(1) are for locally owned enterprises that are either expanding or establishing new operations;

(2) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

(3) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(4) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(5) benefit small- and medium-sized businesses as defined in rules adopted by the board.

History: **En. Sec. 6, Ch. 677, L. 1983.**

17-6-310. No direct loans. (1) The state may not use this revenue to make direct loans.

(2) No money from the Montana in-state investment fund may be used to make direct loans to individual borrowers. Loans or portions thereof originated by a financial institution that are sold to the trust are not direct loans.

History: **(1)En. Sec. 3(3), I.M. No. 95, approved Nov. 2, 1982; (2)En. Sec. 7, Ch. 677, L. 1983.**

17-6-311. Limitation on size of investments. No investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the Montana in-state investment fund the total current accumulated amount of which exceeds 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund.

History: En. Sec. 8, Ch. 677, L. 1983.

Compiler's Comments

Temporary Investment Limit: Section 21, Ch. 677 (HB 100), L. 1983, provided that the investment limit for fiscal 1984 must be calculated based on 25% of the total coal tax deposits to the permanent coal tax trust fund made in fiscal 1983.

17-6-312. State participation in loans. State participation in any loan to a business enterprise, except for a loan guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

History: En. Sec. 9, Ch. 677, L. 1983.

17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board.

History: En. Sec. 10, Ch. 677, L. 1983.

17-6-314. Rate of return. In calculating the rate of return for any investment to be made from the Montana in-state investment fund, the board shall consider the long-term benefit to the Montana economy.

History: En. Sec. 11, Ch. 677, L. 1983.

17-6-315. Service charges. The board shall by rule establish reasonable service fees that may be charged on loans made from the Montana in-state investment fund.

History: En. Sec. 12, Ch. 677, L. 1983.

17-6-316 through 17-6-320 reserved.

17-6-321. Audit and performance evaluation. (1) The board shall contract for an annual independent financial audit of the board and the Montana in-state investment fund.

(2) The board shall contract for biennial independent operational and performance evaluations of the board and the Montana in-state investment fund.

History: En. Sec. 13, Ch. 677, L. 1983.

17-6-322. Reports and publications. (1) By September 30 of each year, the board shall publish a report for distribution to the governor, the legislature, and the public. The report must be written in easily understandable language. The report must include:

(a) financial statements audited by independent auditors;

(b) a statement of the amount of money received by the Montana in-state investment fund from each investment during the period covered;

(c) a statement of investments of the Montana in-state investment fund, including an appraisal at market value;

(d) a description of investment activity during the period covered by the report;

(e) a comparison of the Montana in-state investment fund's performance in relation to intended goals contained in 17-6-303;

(f) an examination of the impact of the investment criteria of 17-6-308 and 17-6-309;

(g) recommendations of any needed changes; and

(h) any other information the board believes would be of interest to the governor, the legislature, and the public.

(2) The annual income statement and balance sheet of the Montana in-state investment fund must be published in at least one newspaper in each judicial district of the state by October 30 of each year.

History: **En. Sec. 14, Ch. 677, L. 1983.**

17-6-323. Report on potential uses of coal tax trust fund. The board shall prepare for each regular session of the legislature a report on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

History: **En. Sec. 15, Ch. 677, L. 1983.**

17-6-324. Rulemaking authority. The board may adopt rules to implement the provisions of this part and 17-6-211(5). Rules adopted by the board may include definitions of small- and medium-sized businesses, a method of committing funds to financial institutions, types of service fees, and types of investments to be made. The board may also adopt procedural rules to govern its proceedings.

History: **En. Sec. 16, Ch. 677, L. 1983.**

17-6-325 through 17-6-330 reserved.

17-6-331. Establishment of a Montana economic development fund. A Montana economic development fund is created. A portion of the interest income from the permanent coal tax trust fund created in 17-6-203(5) shall be deposited in the fund as determined by the legislature. Monies, if any, appropriated by the legislature from the economic development fund shall be used only for programs consistent with the objectives in 17-6-304.

History: **En. Sec. 4, I.M. No. 95, approved Nov. 2, 1982.**

CHAPTER 7

BUDGETING

Part 1 — Budget Systems and Program Plans

Section
17-7-101. Short title.
17-7-102. Definitions.

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Part 4 — Budget Amendments

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Part 1

Budget Systems and Program Plans

Part Cross-References

General appropriation bills, Art. V, sec. 11(4), Mont. Const.

No appropriation to private sector, Art. V, sec. 11(5), Mont. Const.

State to have balanced budget, Art. VIII, sec. 9, Mont. Const.

Requirement of fiscal notes with committee reports, 5-4-201.

Budget amendments, 5-12-102, 5-12-401, 5-12-402.

Fiscal analyst to analyze executive budget, 5-12-302.

Budget systems of cities and towns, Title 7, ch. 6.

Budget systems of counties, Title 7, ch. 6.

Equipment Safety Commission budgets, 61-2-208.

17-7-101. Short title. This part shall be known and may be cited as the "Budget Act".

History: En. Sec. 1, Ch. 205, L. 1919; re-en. Sec. 294, R.C.M. 1921; re-en. Sec. 294, R.C.M. 1935; amd. Sec. 29, Ch. 326, L. 1974; R.C.M. 1947, 79-1001.

17-7-102. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation.

(2) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(3) "Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding.

(4) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(5) "Program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, etc.

(6) "Program size indicator" means a measure to indicate the magnitude of a program.

(7) "Priority listing" means a ranking of proposed expenditures in order of importance.

History: En. 79-1012.1 by Sec. 1, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.1; amd. Sec. 1, Ch. 596, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1) and (3).

17-7-103. Governor chief budget officer — appointment of budget director. (1) The governor shall be the chief budget officer of the state and shall appoint a budget director who shall hold office at the pleasure of the governor and perform the duties assigned by law or by the governor.

(2) The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: (1)En. Sec. 1, Ch. 158, L. 1959; amd. Sec. 1, Ch. 101, L. 1969; amd. Sec. 1, Ch. 42, L. 1974; amd. Sec. 1, Ch. 282, L. 1974; amd. Sec. 8, Ch. 61, L. 1977; Sec. 79-1012, R.C.M. 1947; (2)En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; Sec. 79-1016, R.C.M. 1947; R.C.M. 1947, 79-1012, 79-1016(part).

Cross-References

General duties of Budget Director, 17-1-131.

17-7-104 through 17-7-106. Repealed. Sec. 1, Ch. 432, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

17-7-104 through 17-7-106. En. 79-1012.2, 79-1012.3, 79-1020 by Secs. 2, 3, 5, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.2, 79-1012.3, 79-1012.5.

17-7-107 through 17-7-110 reserved.

17-7-111. Agency program budgets — form distribution and contents. (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms shall be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented shall include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency;

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(e) any other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director must also prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 666, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1) substituted "required by subsection (2)" for "as the budget director shall, in his discretion, feel is necessary for the preparation of a budget, including budget estimates, to include estimates of receipts, actual receipts, estimates of disbursements, actual disbursements, and other information classified and grouped as requested by the budget director and covering such period or periods of time as specified by the budget director"; inserted (2) and (3); and changed phraseology.

17-7-112. Submission deadline. (1) It shall be the duty of each department, agency, and office, including the Montana university system, to submit the information required under 17-7-111 to the budget director on or before September 1 in the even year preceding the convening of the legislature.

(2) Between August 15 and September 30 in the year preceding the convening of the legislature, the director must submit each state agency's budget request required under 17-7-111(2) to the legislative fiscal analyst. The transfer of budget information shall be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information during the month of September and which allows each office to maintain a reasonable staff workflow.

(3) If any department, institution, university unit, or agency shall fail to present such information within the time herein specified, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor by October 30 a budget request on behalf of such department, institution, university unit, or agency, based upon his studies of the operations, plans, and needs thereof.

(4) The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature.

History: **En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 290, L. 1981; amd. Sec. 2, Ch. 666, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), inserted "including the Montana university system" and substituted "the information required under 17-7-111 to" for "information requested by the budget director"; inserted (2) and (4); and in (3) inserted two references to "university unit", and in middle inserted "and submit to the legislative fiscal analyst and the governor by October 30".

1981 Amendment: Deleted "Except as provided in this subsection" at the beginning of (1); substituted "September 1" for "August 15" in (1); deleted "The Montana university system, the department of institutions, and the department of highways shall submit such information on or before September 1 of such year" from the end of (1).

17-7-113. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state.

History: **En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; amd. Sec. 18, Ch. 453, L. 1977; R.C.M. 1947, 79-1016(part).**

Cross-References

Public employees' travel, meals, and lodging, 2-18-501 through 2-18-503.

17-7-114 through 17-7-120 reserved.

17-7-121. Preliminary budget preparation and submission to governor and governor-elect. (1) Upon receipt of the completed forms and other available data and information, the budget director shall examine the same for the purpose of determining the necessity of the disbursements and funds requested and shall, on or before December 15 in the year preceding the convening of the legislature, submit in writing to the governor and to the governor-elect, if one there be, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in the budget to be submitted by the governor to the legislature.

(2) If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments, and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislature without change. It is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts.

History: **En. Sec. 3, Ch. 158, L. 1959; amd. Sec. 3, Ch. 282, L. 1974; R.C.M. 1947, 79-1014.**

17-7-122. Submission of budget to legislature. (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislature at the time of the convening of the legislature.

(2) Legislative branch requests shall be included in the budget submitted by the governor without changes.

History: **(1)En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; Sec. 79-1015, R.C.M. 1947; (2)En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; Sec. 79-1013, R.C.M. 1947; R.C.M. 1947, 79-1015(part), 79-1013(part).**

17-7-123. Form of executive budget. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan shall consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary shall be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit;

(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented shall include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) the current funding level and the modified funding level, if any, for each department and each program of the department. The funding levels must show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;
(ii) grade assigned prior to the completed fiscal year;
(iii) grade assigned during the completed fiscal year;
(iv) grade assigned during the current fiscal year;
(v) recommended grade for the ensuing biennium;
(vi) dollar difference for the upgrade or downgrade for each position; and
(vii) net cost to the agency for grade changes;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category; and

(e) a statement containing further recommendations of the governor should he deem it necessary;

(5) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure shall be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended.

(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; R.C.M. 1947, 79-1015(part); amd. Sec. 2, Ch. 596, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (4)(b).

Cross-References

Long-range building program, 17-7-204.

17-7-124 through 17-7-130 reserved.

17-7-131. Legislative action. The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions shall be based upon the budget and proposed budget bill so submitted. The legislature may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919; re-en. Sec. 299, R.C.M. 1921; amd. Sec. 4, Ch. 167, L. 1933; re-en. Sec. 299, R.C.M. 1935; Sec. 79-1006, R.C.M. 1947; amd. and redes. 79-1015.1 by Sec. 30, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.1.

Cross-References

Compensation, Art. V, sec. 5, Mont. Const.
Compensation, Art. VI, sec. 5, Mont. Const.
Terms and pay, Art. VII, sec. 7, Mont. Const.
Salary commission, Art. XIII, sec. 3, Mont. Const.
Compensation determination, Title 2, ch. 18, part 3.

17-7-132. Right of officers to appear on consideration of budget. The department of administration and representatives of the executive officers, agencies, and institutions of the state and other state agencies expending or applying for state moneys may and, when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill.

History: En. Sec. 7, Ch. 205, L. 1919; re-en. Sec. 300, R.C.M. 1921; re-en. Sec. 300, R.C.M. 1935; Sec. 79-1007, R.C.M. 1947; amd. and redes. 79-1015.2 by Sec. 31, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.2.

Part 2

Long-Range Building Program and Budget

Part Cross-References

Compensation, terms, and officers, Title 5, ch. 17, part 1.

17-7-201. Definitions of building and construction. In this part the following definitions apply:

(1) "Building" includes a:

(a) building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) building, facility, or structure at a state institution;

(c) building, facility, or structure owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963; amd Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314.

17-7-202. Preparation of building programs and submission to department of administration. (1) Before July 1 of each even-numbered year, each state agency and institution shall submit to the department of administration, on forms furnished by the department, a proposed long-range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested by the department relating to the utilization of or need for buildings.

(2) The department shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary and conduct whatever surveys are necessary in order to provide a factual basis for determining the need for and the feasibility of the construction of buildings. The information compiled by the department shall be submitted to the governor before December 1 of each even-numbered year.

History: En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974; R.C.M. 1947, 82-3315(1), (2).

Cross-References

Construction contracts — general provisions, 18-2-101 through 18-2-105.

17-7-203. Submission to legislature. During the first week of each regular legislative session, the governor shall submit to the legislature:

(1) the requests of all state agencies and institutions compiled in the form of a comprehensive, long-range proposed building program, including:

(a) the purpose for which each building would be used;

(b) the estimated cost of each building, including necessary land acquisition;

(c) the reasons given by the institution or agency for needing each building;

(d) a priority order recommended by the agency or institution for each building;

(e) the recommendation of the institution or agency as to when each building is needed;

(f) any comments of the governor;

(2) a building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(a) the purpose for which each building would be used;

(b) the estimated cost of each building and necessary land acquisition;

(c) the reasons for the governor's recommendation to construct each building during the forthcoming biennium;

(d) the proposed method of financing for each building;

(e) any long-range building plans;

(f) any changes in the law necessary to insure an effective, well-coordinated building program for the state.

History: En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974; R.C.M. 1947, 82-3315(3).

17-7-204. Long-range building program. The executive budget for all state agencies shall include detailed recommendations for the state long-range building program presented in a priority listing. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project, an explanation of the problem to be addressed by the proposed project, alternative methods of addressing the problem, the rationale for the selection of a particular alternative, and a projection of increased operating costs incident to the project for the next three bienniums.

History: En. 79-1015.1 by Sec. 4, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.4.

Cross-References

Form of executive budget, 17-7-123.

Authority to construct buildings, 18-2-102.

Scheduling of state building program, 18-2-104.

Part 3

Supplemental Appropriations, Encumbrances, and Reversions

17-7-301. Authorization to expend during first year of biennium from appropriation for second year. (1) A state department, institution, or agency of the executive branch desiring authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium shall make application for such authorization to the governor through the budget director. If the governor finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of said department, institution, or agency during the year for which the appropriation was made, he may, after careful study and examination of the request and upon review of the recommendation of the budget director, authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium.

(2) The department, institution, or agency may expend the amount authorized by the governor only for the purposes specified in the authorization.

(3) The governor shall report to the next legislature in a special section of the budget the amounts expended as a result of all such authorizations granted by him and shall request that any necessary supplemental appropriation bills be passed.

History: En. Sec. 1, Ch. 82, L. 1961; R.C.M. 1947, 79-1019.

Cross-References

Appropriation and disbursement of money from the treasury, 17-8-101.

17-7-302. Encumbrance of fiscal yearend obligations. Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created, except construction contracts which, upon approval of the department of administration, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701.2; amd. Sec. 1, Ch. 544, L. 1979.

Cross-References

Construction contracts — general provisions, Title 18, ch. 2, part 1.

17-7-303. Reappropriation of encumbered obligations at end of each fiscal year. Purchase orders issued and accrued expenses approved by the department of administration shall be encumbered at the end of each fiscal year in the department of administration's accounts and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701.1.

17-7-304. Disposal of unexpended appropriations. All moneys appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

History: En. Sec. 2, H.B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R.C.M. 1921; re-en. Sec. 304, R.C.M. 1935; amd. Sec. 14, Ch. 147, L. 1963; Sec. 79-1011, R.C.M. 1947; amd. and redes. 79-1015.3 by Sec. 32, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.3.

17-7-305. Supplemental appropriations for legislative agencies. Deficiency appropriations, commonly referred to as a "supplemental appropriation", for a legislative branch agency must be included in a separate appropriation bill and may not be included in the bill appropriating money for the operation of the legislature, commonly referred to as the "feed bill".

History: En. Sec. 3, Ch. 618, L. 1979.

Part 4

Budget Amendments

Part Cross-References

Submission of budget amendments to Legislative Finance Committee and review by Legislative Fiscal Analyst, Title 5, ch. 12, part 4.

17-7-401. Definitions. As used in this part, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(3) "Approving authority" means the governor or his designated representative for executive branch agencies, the chief justice of the supreme court or his designated representative for judicial branch agencies, appropriate legislative committees or a designated representative for legislative branch agencies, or the board of regents or its designated representative for the university system.

(4) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund contingent on total compliance with all budget amendment procedures.

(5) "Emergency" means any catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, which was clearly not within the contemplation of the legislature and the governor, and which seriously affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(6) "Executive branch approving authority" means the governor or his designated representative.

(7) "Necessary" means essential to the public welfare and of a nature which cannot wait until the next legislative session for legislative consideration.

(8) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(9) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana

college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte.

History: **En. Sec. 1, Ch. 536, L. 1983.**

17-7-402. Budget amendment requirements. (1) No budget amendment may be approved:

(a) by the approving authority, except a budget amendment to spend funds which were not available for legislative consideration;

(b) by the approving authority, which contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies such expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments shall itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

History: **En. Sec. 2, Ch. 536, L. 1983.**

17-7-403. Budget amendment certification. In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other reasonable alternative available to provide the additional services. Such certification shall specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing personnel because of the present required workload of existing personnel or that the agency is unable within its existing funding to fund all or part of such additional services from any source lawfully available to it.

(d) the budget amendment makes no ascertainable present or future significant commitment for increased general fund support.

(2) The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated

and shall state a specific followup date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date.

(3) For budget amendments to spend money in the state special revenue fund, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

History: En. Sec. 3, Ch. 536, L. 1983.

17-7-404. Executive branch budget amendment procedures. (1) Upon receiving a proposed budget amendment from a requesting agency, the executive branch approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the executive branch approving authority denies the request for a budget amendment, he shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the executive branch approving authority intends to make certification of the budget amendment, immediately upon his completion of the certification he shall forward the certification and all supporting documentation to the legislative fiscal analyst. The executive branch approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6).

(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the executive branch approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the executive branch approving authority.

(5) Upon receipt of the legislative finance committee's written report, the executive branch approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information. If the executive branch approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the executive branch approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his written review and the legislative finance committee's written report required by this

section. Upon receipt of such waiver, the executive branch approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in this part confers any authority on the legislative finance committee to approve or deny budget amendments.

History: **En. Sec. 4, Ch. 536, L. 1983.**

17-7-405. Voidness of improperly certified budget amendments. Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in this part may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

History: **En. Sec. 5, Ch. 536, L. 1983.**

CHAPTER 8

DISBURSEMENT AND EXPENDITURE

Part 1 — Limits on Disbursements and Expenditures

Section
17-8-101. Appropriation and disbursement of moneys from the treasury.
17-8-102. Expenditure procedures — quarterly allotment system.
17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts.
17-8-104. Civil penalties and remedies for violation.
17-8-105. Definitions applicable to expenditure limitation.
17-8-106. Expenditure limitation — exception.
17-8-107. Limitations on spending deferred revenue.

Part 2 — Claims

17-8-201. Authorizations for disbursements — submission of claim to department of administration.
17-8-202. Preaudit of liquidated or settled claims and transmittal of unliquidated claims.
17-8-203. Minimum refunds.
17-8-204 through 17-8-210 reserved.
17-8-211. Notice required for assignment of claims against state.
17-8-212. Effect of assignment.
17-8-213 through 17-8-220 reserved.
17-8-221. Unliquidated claims.
17-8-222. Records and witnesses.
17-8-223. Time for meeting for action on unsettled claims.
17-8-224. Examination of claims and report to legislature.
17-8-225. Restrictions on power of board — disqualifications.
17-8-226. Appeals.
17-8-227 through 17-8-230 reserved.
17-8-231. Liability for false claims.
17-8-232 through 17-8-240 reserved.
17-8-241. Definitions relating to interest assessment.
17-8-242. Interest assessed on amounts due.

17-8-243. Source for payment of interest.
17-8-244. Exemptions.

Part 3 — Warrants

17-8-301. State moneys — how expended by treasurer.
17-8-302. Order in which warrants are drawn.
17-8-303. Warrants — presentation and cancellation.
17-8-304. Payment, registry, and interest.
17-8-305. Cost accounting for warrant.
17-8-306. Issuance of duplicate warrant.
17-8-307. Board's power to prevent payment of auditor's warrants.
17-8-308. Payment of interest — land grant warrants.

Chapter Cross-References

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Treasurer to withhold payment, 2-2-206.

Part 1

Limits on Disbursements and Expenditures

Part Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Fiscal note to evidence change in expenditures, 5-4-205.

17-8-101. Appropriation and disbursement of moneys from the treasury. (1) Moneys deposited in the general fund, the special revenue fund type, the enterprise fund type, the internal service fund type, and the capital projects fund type, with the exception of refunds authorized in subsection (3), shall be paid out of the treasury only on appropriation made by law.

(2) Moneys deposited in the debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

(3) Money paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-415(1) thru (3); amd. Sec. 1, Ch. 29, L. 1981; amd. Sec. 13, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted "type" after "fund" in four places; and in (2) substituted "debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, and agency fund type" for "debt service fund and the trust and agency fund".

1981 Amendment: Substituted new names for treasury funds because of name changes in Ch. 28, L. 1981; deleted former subsection (2) relating to appropriations from the old revolving fund.

Cross-References

Authorization to expend during first year of biennium from appropriation for second year, 17-7-301.

Minimum refunds, 17-8-203.

Administrative expenses, 19-6-203.

17-8-102. Expenditure procedures — quarterly allotment system. (1) The department may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislature in the enactment of the appropriations, including but not limited to procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within 3 months from the date of the issuance of the purchase order or contract.

(2) The budget director may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislature shall then, except with respect to items of capital outlay and repairs and replacement through the long-range building program, be made available to the office, institution, or agency in quarterly allotments. However, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, or agency and not on a prorated quarterly basis.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; R.C.M. 1947, 82-109(3), (4); (2)En. Sec. 1, Ch. 118, L. 1979; amd. Sec. 2, Ch. 118, L. 1979.

Cross-References

Reappropriation of encumbered obligations at end of each fiscal year, 17-7-303.

Appropriation and disbursement of money from the treasury, 17-8-101.

17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation, including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law. It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such legislative appropriation, which includes an approved, authorized, and valid budget amendment.

(2) A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend any other statute.

History: En. Sec. 1, Ch. 40, L. 1937; amd. Sec. 2, Ch. 82, L. 1961; amd. Sec. 11, Ch. 343, L. 1977; R.C.M. 1947, 79-901; amd. Sec. 1, Ch. 618, L. 1979; amd. Sec. 8, Ch. 536, L. 1983; (2)En. Sec. 1, Ch. 693, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 536, near middle of (1), substituted ", including any approved, authorized, and valid budget amendment," for "or authorized budget amendment"; and at end of (1) made similar change.

Subsection (2) was enacted by sec. 1, Ch. 693, L. 1983. The codification instruction was to include sec. 1, Ch. 693 as an integral part of Title 17, ch. 8. The Code Commissioner codified section as subsection (2) of this section because of close coherence of the subject matter.

Cross-References

Contents of appropriation bill, Art. V, sec. 11, Mont. Const.

Authorization to expend during first year of biennium from appropriation for second year, 17-7-301.

Control of expenditures, 20-25-425.

17-8-104. Civil penalties and remedies for violation. (1) (a) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is personally liable and the surety or sureties on his bond shall also be liable to the state for the amount of the excess thus unlawfully expended. An action under this subsection (1)(a) may be brought upon complaint of the attorney general, of the legislature by joint resolution, of the legislative finance committee, or of any taxpayer, filed in a district court of this state.

(b) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is guilty of misfeasance in office and shall be guilty of wrongdoing and shall be subject to removal from office or from such employment. An action under this subsection (1)(b) may be brought upon complaint of the attorney general, the legislature by joint resolution, or any taxpayer, filed in a district court of this state.

(2) Complaints under subsections (1)(a) and (1)(b) may be combined in a single action.

(3) Remedies and penalties provided by this section may be pursued singly or in any combination.

History: En. Sec. 4, Ch. 40, L. 1937; amd. Sec. 3, Ch. 82, L. 1961; R.C.M. 1947, 79-904; amd. Sec. 2, Ch. 618, L. 1979; amd. Sec. 9, Ch. 536, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a), deleted from first sentence a provision that the listed persons violating 17-8-103 are guilty of a misdemeanor punishable by $50 to $500, 30 days to 6 months in jail, or both, and inserted second sentence; in second sentence of (1)(b) changed phraseology and inserted "the legislature by joint resolution"; and inserted (2) and (3).

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Public offices — vacancies created, 2-16-501.

Notice of removal, 2-16-503.

Classification of offenses, 45-1-201.

General definitions, 45-2-101.

17-8-105. Definitions applicable to expenditure limitation. As used in 17-8-106, the following definitions apply:

(1) "Montana total personal income" means the current income from all sources received during a particular period of time by persons residing within Montana as determined by the United States department of commerce or its successor agency.

(2) "State expenditures" means the general fund appropriations, the special revenue fund type appropriations, and the cash portion of the appropriations in the capital projects fund type, excluding:

(a) money received from the federal government;

(b) payments of principal and interest on bonded indebtedness;

(c) money paid for unemployment or disability insurance benefits;

(d) money received from the sale of goods or services provided that the purchase of the goods or services is discretionary;

(e) money paid from permanent endowments, constitutional trusts, or pension funds;

(f) proceeds of gifts or bequests made for purposes specified by the donor;

(g) money appropriated for tax relief; and

(h) funds transferred within state government or used to purchase goods for resale.

History: En. Sec. 1, Ch. 514, L. 1981; amd. Sec. 14, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In introductory clause of (2), substituted "special revenue fund type" for "earmarked fund" and substituted "capital projects fund type" for "bond proceeds and insurance clearance fund".

17-8-106. Expenditure limitation — exception. (1) Except as provided in subsection (2), the state expenditures for a biennium may not exceed the state expenditures for the preceding biennium plus the product of the state expenditures for the preceding biennium and the growth percentage. The growth percentage is the percentage difference between the average Montana total personal income for the 3 calendar years immediately preceding the next biennium and the average Montana total personal income for the 3 calendar years immediately preceding the current biennium.

(2) The legislature may appropriate funds in excess of this limit from the reserve account if:

(a) the governor declares that an emergency exists; and

(b) two-thirds of the members of each house approve a bill stating the amount to be spent in excess of the expenditures limitation established in subsection (1), the source of the excess revenue to be spent, and an intention to exceed the limitation.

(3) Expenditures may exceed the expenditures limitation only for the year or years for which an emergency has been declared.

(4) The legislature is not required to appropriate the full amount allowed in any year under subsection (1).

History: En. Sec. 2, Ch. 514, L. 1981.

Cross-References

Declaration of emergency — effect and termination, 10-3-302.

17-8-107. Limitations on spending deferred revenue. No agency, including any unit of the university system, may expend deferred revenue for current fiscal year operations. For purposes of this section, "deferred revenue" means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.

History: En. Sec. 1, Ch. 573, L. 1983.

Part 2

Claims

Part Cross-References

Auditing officer to disallow claims, 2-2-205.

Tort claims, Title 2, ch. 9, parts 1, 3.

State insurance plan and tort claims, Title 2, ch. 9, part 2.

Board of examiners — allocation, 2-15-1007.

Claim settlement by Attorney General, 18-1-412, 18-1-413.

Verification of pleadings, 25-4-203.

17-8-201. Authorizations for disbursements — submission of claim to department of administration. (1) All authorizations for disbursements shall be given by the agency concerned, and a record shall be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department of administration and must bear the signature of the authorizing officer or employee.

(2) The department may prescribe the claim form and may establish, in writing, rules governing the preparation, submittal, and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved.

History: (1)En. Sec. 1, Ch. 97, L. 1961; amd. Sec. 46, Ch. 326, L. 1974; 82-109.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 97, L. 1961; amd. Sec. 48, Ch. 326, L. 1974; Sec. 82-109.3, R.C.M. 1947; R.C.M. 1947, 82-109.1, 82-109.3.

Cross-References

Appropriation and disbursement of money from the treasury, 17-8-101.

17-8-202. Preaudit of liquidated or settled claims and transmittal of unliquidated claims. (1) The department of administration is not required to preaudit a liquidated claim against the state. However, all state agencies shall submit copies of all claims to the department of administration which may preaudit those claims it considers necessary. The agency shall retain the original of all documents sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) The department may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a liquidated claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislature.

(3) An unliquidated claim submitted to the department shall be transmitted to the board of examiners to be processed as provided by law.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969; amd. Sec. 47, Ch. 326, L. 1974; R.C.M. 1947, 82-109.2; amd. Sec. 1, Ch. 498, L. 1979.

Cross-References

Powers and duties, 5-13-304.

17-8-203. Minimum refunds. When not specifically provided by law, the department may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; R.C.M. 1947, 82-110(4).

Cross-References

Appropriation and disbursement of money from the treasury, 17-8-101.

17-8-204 through 17-8-210 reserved.

17-8-211. Notice required for assignment of claims against state. (1) All transfers and assignments made of any claim against the state, or any part thereof or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

(2) The state auditor may promulgate rules regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

(3) Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than one party, except that an assignment may be made to one party as agent or trustee for two or more parties. An assignment shall not be subject to further assignment.

History: **En. Secs. 1 thru 3, Ch. 44, L. 1967; R.C.M. 1947, 83-901, 83-902, 83-903.**

Cross-References

Filing of claims against state and political subdivisions, 2-9-301.

Contract actions against the state, Title 18, ch. 1, part 4.

17-8-212. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants or preclude employees of the state from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: **En. Sec. 4, Ch. 44, L. 1967; R.C.M. 1947, 83-904.**

Cross-References

Restrictions upon assignment of wages or salary, 31-1-304.

17-8-213 through 17-8-220 reserved.

17-8-221. Unliquidated claims. (1) Any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners at least 2 months before the meeting of the legislature, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.

(2) This board is not required to examine settled or liquidated claims for expenditures of any office or department of state government.

History: **(1)En. Sec. 236, Rev. C. 1907; re-en. Sec. 242, R.C.M. 1921; re-en. Sec. 242, R.C.M. 1935; Sec. 82-1113, R.C.M. 1947; (2)En. Sec. 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R.C.M. 1921; Cal. Pol. C. Secs. 654-685; re-en. Sec. 232, R.C.M. 1935; amd. Sec. 7, Ch. 97, L. 1961; Sec. 82-1101, R.C.M. 1947; R.C.M. 1947, 82-1101(part), 82-1113.**

Cross-References

Claims and actions, Title 2, ch. 9, part 3.

Contingent revolving accounts, duties concerning, 17-2-201.

Verification of pleadings in civil actions, 25-4-203.

17-8-222. Records and witnesses. (1) The department of administration must keep a record of all the board's proceedings, and any member may have his dissent to the action of the majority, upon any matter, entered upon the record.

(2) The president may issue subpoenas and compel the attendance of witnesses before the board or any member thereof in the same manner that any court in the state may. Whenever the testimony of any witness against a demand pending before it is material, the president must cause the attendance of the witness before the board or a member thereof to testify concerning the demand, and the board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant.

(3) Each member of the board may take depositions to be used before it.

History: (1)En. Sec. 228, Rev. C. 1907; re-en. Sec. 234, R.C.M. 1921; re-en. Sec. 234, R.C.M. 1935; amd. Sec. 8, Ch. 97, L. 1961; amd. Sec. 53, Ch. 326, L. 1974; Sec. 82-1105, R.C.M. 1947; (2)En. Sec. 230, Rev. C. 1907; re-en. Sec. 236, R.C.M. 1921; re-en. Sec. 236, R.C.M. 1935; Sec. 82-1107, R.C.M. 1947; (3)En. Sec. 231, Rev. C. 1907; re-en. Sec. 237, R.C.M. 1921; re-en. Sec. 237, R.C.M. 1935; Sec. 82-1108, R.C.M. 1947; R.C.M. 1947, 82-1105, 82-1107, 82-1108.

Cross-References

Depositions before action or pending appeal, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Persons before whom depositions may be taken, Rule 28, M.R.Civ.P. (see Title 25, ch. 20).

Witness fees, Title 26, ch. 2, part 5.

17-8-223. Time for meeting for action on unsettled claims. On the first Monday of November preceding the meeting of each legislature, the board must hold a session for the purpose of examining the class of claims referred to in 17-8-221(1) and may adjourn from time to time until their work is completed. They must cause a list and brief abstract of all claims filed with them up to that date to be made and published in some newspaper at the seat of government for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the board will proceed to examine the claims.

History: En. Sec. 237, Rev. C. 1907; re-en. Sec. 243, R.C.M. 1921; re-en. Sec. 243, R.C.M. 1935; R.C.M. 1947, 82-1114.

17-8-224. Examination of claims and report to legislature. (1) The board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them and report to the legislature such facts and recommendations concerning them as they may think proper. In making their recommendations, they may state and use any official or personal knowledge which any member of the board may have touching such claims.

(2) The board must make up their report and recommendations at least 30 days before the meeting of the legislature. A brief abstract of their report, showing the claims rejected and those or the amounts thereof allowed, must be published in a newspaper published at the seat of government for such time as the board may prescribe before the meeting of the legislature.

History: (1)En. Sec. 238, Rev. C. 1907; re-en. Sec. 244, R.C.M. 1921; re-en. Sec. 244, R.C.M. 1935; Sec. 82-1115, R.C.M. 1947; (2)En. Sec. 239, Rev. C. 1907; re-en. Sec. 245, R.C.M. 1921; re-en. Sec. 245, R.C.M. 1935; Sec. 82-1116, R.C.M. 1947; R.C.M. 1947, 82-1115, 82-1116.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

17-8-225. Restrictions on power of board — disqualifications. (1) The board must not entertain for the second time a demand against the state once rejected by it or by the legislature unless such facts are presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial.

(2) No member of the board may act on any claim in which he is interested or for expenditures incurred in his office or be present when the decision is made.

History: (1)En. Sec. 241, Rev. C. 1907; re-en. Sec. 247, R.C.M. 1921; re-en. Sec. 247, R.C.M. 1935; R.C.M. Sec. 82-1118, R.C.M. 1947; (2)En. Sec. 240, Rev. C. 1907; re-en. Sec. 246, R.C.M. 1921; re-en. Sec. 246, R.C.M. 1935; amd. Sec. 10, Ch. 61, L. 1977; Sec. 82-1117, R.C.M. 1947; R.C.M. 1947, 82-1117, 82-1118.

Cross-References

Ethical principles for public officers and employees, 2-2-105.

17-8-226. Appeals. Any person interested who is aggrieved by the disapproval of a claim by the board may appeal from the decision to the legislature by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislature.

History: En. Sec. 242, Rev. C. 1907; re-en. Sec. 248, R.C.M. 1921; re-en. Sec. 248, R.C.M. 1935; R.C.M. 1947, 82-1119.

17-8-227 through 17-8-230 reserved.

17-8-231. Liability for false claims. (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any state agency or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the state as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be sued for in the same suit.

History: En. Sec. 2, Ch. 151, L. 1981.

Cross-References

False claims to public agencies — criminal offense, 45-7-210.

17-8-232 through 17-8-240 reserved.

17-8-241. Definitions relating to interest assessment. As used in 17-8-242 through 17-8-244, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by the state or any agency thereof.

(2) "Supplies" means all personal property purchased, leased, or contracted for by the state or any agency thereof, including leases of equipment. The term also includes leases of buildings or other real property by the state or any agency thereof.

History: En. Sec. 1, Ch. 484, L. 1983.

17-8-242. Interest assessed on amounts due. (1) Except as provided in 17-8-244, a state agency shall pay simple interest at the rate of

0.05% each day on amounts due for supplies and services received if the agency fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.

History: **En. Sec. 2, Ch. 484, L. 1983.**

17-8-243. Source for payment of interest. Any interest owing under 17-8-242 must be paid from funds designated for administrative costs of the agency receiving the supplies and services unless the delay was caused by a different agency, and then the interest must be paid from the administrative costs of that agency.

History: **En. Sec. 4, Ch. 484, L. 1983.**

17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute;

(3) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) contracts entered into before October 1, 1983;

(5) wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

(6) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

History: **En. Sec. 3, Ch. 484, L. 1983.**

Part 3

Warrants

Part Cross-References

Officers prohibited from dealing in warrants, 2-2-204.

Use of facsimile signature on warrants, 2-16-114.

Warrants to Fire Department Relief Association, 19-11-514.

17-8-301. State moneys — how expended by treasurer. Except as herein provided, no moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the department of administration in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R.C.M. 1921; re-en. Sec. 193, R.C.M. 1935; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-202.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

Contingent revolving accounts — when established, 17-2-201.

17-8-302. Order in which warrants are drawn. All warrants for claims which have been audited by the department of administration and filed in the auditor's office must be drawn in the order in which they are transmitted to him by the department of administration.

History: En. Sec. 423, Pol. C. 1895; re-en. Sec. 173, Rev. C. 1907; re-en. Sec. 154, R.C.M. 1921; Cal. Pol. C. Sec. 436; re-en. Sec. 154, R.C.M. 1935; amd. Sec. 5, Ch. 97, L. 1961; R.C.M. 1947, 79-104.

17-8-303. Warrants — presentation and cancellation. (1) All warrants drawn by the state auditor on the state treasury shall be presented for payment within 1 year after the date of the issue thereof. Should the payee or legal holder of any warrant fail to present it for payment within the time specified, the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to a separate agency fund account administered by the state auditor. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof.

(2) Three years after cancellation, the warrant shall be classed as unclaimed property subject to the provisions of Title 70, chapter 9, parts 1 through 3. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, such presentation shall be to the department of revenue as provided in 70-9-310.

History: En. Sec. 1, Ch. 80, L. 1907; re-en. Sec. 178, Rev. C. 1907; re-en. Sec. 158, R.C.M. 1921; re-en. Sec. 158, R.C.M. 1935; amd. Sec. 3, Ch. 94, L. 1969; amd. Sec. 1, Ch. 276, L. 1977; R.C.M. 1947, 79-108.

Cross-References

Disposition of unclaimed property, Title 70, ch. 9, parts 1 through 3.

17-8-304. Payment, registry, and interest. (1) The state treasurer shall, on the presentation of state warrants regularly issued, pay the same out of any funds available for such payments, and in the event there are no funds available for such payment, he must register each warrant in a book or register to be kept for that purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, and the number and amount thereof and endorse on each warrant so registered, on its face, "presented for payment and not paid for want of funds and registered in this office this .... day of ....", inserting the date of registration, and he shall affix his signature as such treasurer thereto. All warrants so registered and endorsed on and after March 1, 1927, shall bear interest at the rate of 4% a year until called for payment, after date of which call interest shall cease. All warrants shall be redeemed and paid in the order of their registration.

(2) Nothing herein contained shall be construed to apply to any warrants issued on account of any land grant fund or by virtue of any special act authorizing the issuance thereof.

History: (1)En. Sec. 1, p. 98, L. 1899; re-en. Sec. 181, Rev. C. 1907; amd. Sec. 1, Ch. 260, L. 1921; amd. Sec. 1, Ch. 6, Ex. L. 1921; re-en. Sec. 180, R.C.M. 1921; amd. Sec. 1, Ch. 159, L. 1923; amd. Sec. 1, Ch. 111, L. 1925; amd. Sec. 1, Ch. 2, L. 1927; re-en. Sec. 180, R.C.M. 1935; amd. Sec. 5, Ch. 61, L. 1977; 79-208, R.C.M. 1947; (2)En. Sec. 2, P. 99, L. 1899; re-en. Sec. 182, Rev. C. 1907; re-en. Sec. 181, R.C.M. 1921; re-en. Sec. 181, R.C.M. 1935; 79-209 R.C.M. 1947; R.C.M. 1947, 79-208, 79-209.

17-8-305. Cost accounting for warrant. In his discretion it is the duty of the state auditor to establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a state special revenue fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(17); amd. Sec. 3, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to revolving fund.

17-8-306. Issuance of duplicate warrant. (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate", and except as herein provided, no such warrant may be issued or delivered unless the person entitled to receive the same deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save Montana and its officers harmless on account of the issuance of the duplicate warrant.

(2) No bond of indemnity is required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the amount of the lost or destroyed warrant is less than $100;

(e) it can be established that a crime has been committed and as a result of such crime that a Montana warrant has been stolen or destroyed;

(f) it can be established that a Montana warrant has been mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the state of Montana.

(3) Whenever the owner or custodian applies under the provisions of subsections (2)(e), (2)(f), or (2)(g), a stop-payment order shall be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application shall include an agreement to indemnify and hold harmless the state or its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R.C.M. 1921; re-en. Sec. 159, R.C.M. 1935; amd. Sec. 4, Ch. 94, L. 1969; amd. Sec. 1, Ch. 318, L. 1977; R.C.M. 1947, 79-109.

17-8-307. Board's power to prevent payment of auditor's warrants. Whenever the board of examiners has reason to believe that the state auditor has drawn or is about to draw his warrant without authority of law or for a larger amount than the state actually owes, the board must notify the state treasurer not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislature or the board.

History: En. Sec. 244, Rev. C. 1907; re-en. Sec. 250, R.C.M. 1921; re-en. Sec. 250, R.C.M. 1935; R.C.M. 1947, 82-1121.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

17-8-308. Payment of interest — land grant warrants. The interest on all land grant warrants shall be payable on July 1 next succeeding the date of issue and annually thereafter. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants or interest thereon, the treasurer shall cause to be published a brief notice that said warrants or the interest on particular warrants on which interest would be payable on July 1, describing them by numbers and names of funds, will be forthwith payable; and on the presentation of any such warrants on or at any time after July 1, the treasurer shall pay the interest thereon, endorsing the date of payment and amount paid of each warrant, returning the same to the holder, and he shall keep a register showing the dates and amounts of each interest payment on each warrant in each fund. If any warrants are called for payment, interest thereon shall cease on the date fixed in said notice.

History: En. Sec. 3512, Pol. C. 1895; re-en. Sec. 2204, Rev. C. 1907; amd. Sec. 92, Ch. 147, L. 1909; re-en. Sec. 1917, R.C.M. 1921; re-en. Sec. 1917, R.C.M. 1935; R.C.M. 1947, 79-1501.

TITLE 18

PUBLIC CONTRACTS

Ch.
1. Public Contracts Generally.
2. Construction Contracts.
3. State Building Leases.
4. Montana Procurement Act.
5. Special Purchasing Conditions.
6. Sales.
7. Printing and Legal Notices.
8. Procurement of Services.
Chapters 9 and 10 reserved.
11. State-Tribal Cooperative Agreements.

CHAPTER 1

PUBLIC CONTRACTS GENERALLY

Part 1 — Preferences

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18-1-102. State contracts to lowest resident bidder.
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18-1-105. Repealed.
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Part 4 — Contract Actions Against the State

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18-1-403. Stipulations restricting enforcement void.
18-1-404. Liability of state — limitations — costs.
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18-1-413. Litigation — compromise.
18-1-414. Judgments — payment.

Chapter Cross-References

Construction of contracts, Title 1, ch. 4, part 1.

Officers, legislators not to have interest in contracts, 2-2-201.

Transfer of contract rights under executive reorganization, 2-15-135.

Contract authority — television district, 7-13-2510, 7-13-2511.

Attachment in contract actions, 27-18-101, 27-18-201.

Injunctions in contract actions, 27-19-103.

Revision and rescission of contracts, Title 28, ch. 2, parts 16 and 17.

Interpretation of contracts, Title 28, ch. 3.

Attorney General authorized to purchase or lease equipment and facilities for teletypewriter communications system, 44-2-302, 44-2-312 through 44-2-316.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Contract authority — Highway Commission, 60-2-111.

Contract authority — municipal and regional airport authorities, 67-11-103.

Contract authority — Department of Agriculture, 80-2-104, 80-7-504.

Part 1

Preferences

Part Cross-References

Public participation in awarding contracts, 2-3-103, 2-3-104, 2-3-111.

Veterans' preference, 10-2-201 through 10-2-206.

Freedom from discrimination in public contracts, 49-3-207.

18-1-101. Department of administration defined. Unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.

History: **En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974; R.C.M. 1947, 82-1901.1.**

18-1-102. State contracts to lowest resident bidder. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly

prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969; R.C.M. 1947, 82-1924.

Cross-References

Competitive bids for county road contracts, 7-14-2404.

Contracts for bridges, 7-14-2406.

Award of contract by local improvement district, 7-14-2716.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Small business set-asides, 18-5-304.

Construction with other sections — small business preferences, 18-5-308.

Letting contracts for school facilities, 20-6-606.

School districts — contracts with Montana firms encouraged, 20-6-635.

Competitive bidding — highways, 60-2-112.

18-1-103. Residence defined. (1) For the purpose of 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall include actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for purchase of products, materials, supplies, or equipment, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies, or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of 18-1-102, 18-1-103, and 18-1-112.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974; R.C.M. 1947, 82-1925.

Cross-References

Residence — rules for determining, 1-1-215.

"Bona fide resident of Montana" defined, 18-2-401.

Business corporations — effect of issuance of certificate of incorporation, 35-1-204.

Resident defined — hunting and fishing, 87-2-102.

18-1-104. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-105. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-106. Department of revenue to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence. (1) The department of revenue shall determine whether or not certain contractors, issued public contractor's licenses under the provisions of Title 15, chapter 50, are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident/nonresident status be made by the department. All requests must specify the name and address of the licensed public contractor for whom a determination of resident/nonresident status is required.

(2) If a determination is made that a licensed public contractor is not a resident but he thereafter qualifies as such, he may apply to the department of revenue for a redetermination of his residency. If, upon redetermination, the licensed public contractor is found to qualify as a resident, he shall be furnished a letter by the department attesting to such status.

(3) The determination of the department of revenue that a licensed public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact.

History: En. Sec. 1, Ch. 92, L. 1979.

18-1-107 through 18-1-110 reserved.

18-1-111. Impartiality to be shown in letting contracts — preference to residents. The department may not show any partiality or favoritism in making awards or contracts and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders of the state over nonresident bidders.

History: En. Sec. 10, Ch. 66, L. 1923; re-en. Sec. 293.10, R.C.M. 1935; amd. Sec. 75, Ch. 326, L. 1974; R.C.M. 1947, 82-1920.

Cross-References

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Construction with other sections — small business preferences, 18-5-308.

Nondiscrimination provision in all public contracts, 49-3-207.

18-1-112. Montana product preference provisions. (1) Each contract awarded by any political subdivision, school district, public corporation, or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies, and equipment procured if such products, materials, equipment, and supplies are comparable in price and quality.

(2) It is the intent of 18-1-102, 18-1-103, and this section that, whenever possible, products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality, and performance shall be preferred for use in all projects and in all state institutions.

(3) Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation, or agency for a period of 2 years.

(4) The preference given to Montana products shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969; amd. Sec. 6, Ch. 97, L. 1977; R.C.M. 1947, 82-1926.

Cross-References

Competitive bids for county road contracts, 7-14-2404.

Contracts for bridges, 7-14-2406.

Award of contract by local improvement district, 7-14-2716.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Construction with other sections — small business preferences, 18-5-308.

School districts — contracts with Montana firms encouraged, 20-6-635.

Purpose of Development Credit Corporation Act, 32-4-102.

Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals, 37-71-301.

Competitive bidding — highways, 60-2-112.

Part 2

Bid Security

Part Cross-References

Bids and contractor's bond, 17-5-603, 17-5-613.

Surety insurance — performance bonds included, 33-1-211.

Resident agent not required for sale of bid bond, 33-17-1111.

Surety insurers — may execute performance bonds, 33-26-104.

Highways — bidder's security — contractor's bond, 60-2-113.

18-1-201. Requirement for bidder's security. (1) A "public authority" or "obligee" includes:

(a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;

(b) any county or other political subdivision of this state;

(c) any municipal corporation or authorized subdivision thereof; or

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) In all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned

as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Bid security, 18-2-302.

Indemnity, Title 28, ch. 11, part 3.

18-1-202. Advertisement for bid to specify required security. (1) The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) in any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount be in excess of the former; or

(b) in any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid in the sum specified by the public authority shall be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of such forms of indebtedness as may be awarded on acceptance of bid and in compliance with the terms thereof.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum, but in no case less than 2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and 10% of the bid price for any other bid, which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor shall constitute compliance with the requirement for bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 85, L. 1979.

Cross-References

Bid security, 18-2-302.

Damages for breach of contract, 27-1-311.

Indemnity, Title 28, ch. 11, part 3.

18-1-203. Form of security. (1) Except as provided in subsection (4), in all cases under 18-1-202(1)(a) the bidder, offeror, or tenderer shall accompany any bid with either:

(a) lawful moneys of the United States;

(b) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana; or

(c) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

(2) Except as provided in subsection (4), in all cases under 18-1-202(1)(b) the bidder shall accompany the bid with the security described in (1)(a) or (1)(b) above.

(3) The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

(4) The provisions of this section do not apply to bonds issued under Title 17, chapter 5, part 8.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 11, Ch. 184, L. 1983.

Compiler's Comments

1983 Amendment: In (1) and (2), inserted exception at beginning; and inserted (4).

Cross-References

Bid security, 18-2-302.

Suretyship, Title 28, ch. 11, part 4.

Banks — acceptance and issuance of drafts and letters of credit, 32-1-437.

Certified checks, 32-1-441.

18-1-204. Forfeiture — bidder's liability. (1) If in any instance one or more bids be accepted or a sale of any form of indebtedness is ordered or a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned and become immediately liable on the bid bond but not in excess of the penal sum therein stated.

(2) In no event shall the bidder's liability, the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Cross-References

Bid security, 18-2-302.

Indemnity, Title 28, ch. 11, part 3.

18-1-205. Return of bid security. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Cross-References

Bid security, 18-2-302.

18-1-206. Effect of compliance. Nothing contained in this part shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract or excuse compliance with any requirements for performance bonds at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

History: **En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).**

Part 3

Prepayment of Public Contractors

Part Cross-References

Public contractor's license and tax, Title 15, ch. 50.

Bids and contractor's bond, 17-5-603, 17-5-613.

18-1-301. Contractor withdrawals — deposit of obligations. (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision thereof, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana or any department, agency, or political subdivision thereof pursuant to the terms of such contract, provided the contractor shall deposit with the treasurer of the state of Montana:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract.

History: **En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971; R.C.M. 1947, 82-4101.**

Cross-References

Guaranty, suretyship, and indemnity, Title 28, ch. 11.

18-1-302. Servicing of deposited obligations. After notice to the owner and surety, the treasurer of the state of Montana shall have the power to enter into a contract or agreement with any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor, to provide for the custodial care and servicing of any obligations deposited with him pursuant to this part. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this part.

History: **En. Sec. 2, Ch. 194, L. 1969; R.C.M. 1947, 82-4102.**

Cross-References

Deposit of funds in the hands of the State Treasurer, 17-6-101.

Trust deposits — payments, 32-1-443.

18-1-303. Interest or income on deposits to contractor. (1) The treasurer of the state of Montana or any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to 18-1-302, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation.

(2) If deposited in the form of coupon bonds, the treasurer of the state of Montana shall deliver each such coupon as it matures to the contractor.

History: En. Sec. 3, Ch. 194, L. 1969; R.C.M. 1947, 82-4103.

Cross-References

Interest on deposits — conformity with federal law, 17-6-104.

18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana or by any department, agency, or political subdivision thereof pursuant to the terms of a contract from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons, or income only from those obligations which remain on deposit after such amount has been deducted.

History: En. Sec. 4, Ch. 194, L. 1969; R.C.M. 1947, 82-4104.

Part 4

Contract Actions Against the State

Part Cross-References

Claims against state, Title 17, ch. 8, part 2.

Time for appeal in actions involving state, Rule 5, M.R.App.Civ.P. (see Title 25, ch. 21).

Limitation on contract actions, 27-2-202.

18-1-401. Jurisdiction. The district courts of the state of Montana shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim or dispute arising out of any express contract entered into with the state of Montana or any agency, board, or officer thereof.

History: En. Sec. 1, Ch. 138, L. 1955; R.C.M. 1947, 83-601.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

18-1-402. Administrative procedures — exhaustion — time limitations. Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and said agency, the contractor, before proceeding to bring an action in court under the provisions of this part, must resort to such procedure within the time specified in his contract or, if no time is specified, within 90 days after the question or dispute has arisen, provided:

(1) in the case where a settlement procedure is provided by said contracting agency, all actions authorized hereunder must be commenced within 1

year after a final decision has been rendered pursuant to such settlement procedure; and

(2) in the case where no settlement procedure is provided by said contracting agency, the action must be commenced by the contractor within 1 year after the cause of action has arisen.

History: **En. Sec. 2, Ch. 138, L. 1955; R.C.M. 1947, 83-602.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

Statutes of Limitations, Title 27, ch. 2.

Statute of Limitations in contracts for sale, 30-2-725.

18-1-403. Stipulations restricting enforcement void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the provisions of this part is void.

History: **En. Sec. 3, Ch. 138, L. 1955; R.C.M. 1947, 83-603.**

Cross-References

Restraints upon legal proceedings void, 28-2-708.

18-1-404. Liability of state — limitations — costs. (1) The state of Montana shall be liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to or after judgment or for punitive damages.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs shall be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, except that such costs shall not include attorney's fees.

History: **En. Sec. 4, Ch. 138, L. 1955; R.C.M. 1947, 83-604; amd. Sec. 3, Ch. 402, L. 1979.**

Cross-References

Claims against state, Title 17, ch. 8, part 2.

18-1-405 through 18-1-410 reserved.

18-1-411. Practice and procedure. In actions under the provisions of this part, the forms of process, writs, pleadings, and motions and the practice and procedure, together with the right of appeal to the supreme court of the state of Montana, shall be the same as if the state of Montana were a private person, and provisions for counterclaim and setoff shall be the same as if the state of Montana were a private person.

History: **En. Sec. 5, Ch. 138, L. 1955; R.C.M. 1947, 83-605.**

Cross-References

Civil procedure, Title 25.

18-1-412. Service of process upon attorney general. In addition to any other requirement for service of process contained in Rule 4D(2)(h), M.R.Civ.P., the attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served in actions under the provisions of this part.

History: **En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part); amd. Sec. 1, Ch. 58, L. 1979.**

Cross-References

Attorney General — general duties, 2-15-501.

18-1-413. Litigation — compromise. The attorney general shall have full charge of such litigation on behalf of the state of Montana. He is authorized to arbitrate, compromise, or settle any claim cognizable under this part after the institution of any suit thereon, with the approval of the court in which said suit is pending.

History: En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part).

Cross-References

Attorney General — general duties, 2-15-501.

18-1-414. Judgments — payment. A final judgment shall be the obligation of the state of Montana and shall be paid out of funds appropriated by the legislature next succeeding the date of judgment.

History: En. Sec. 7, Ch. 138, L. 1955; R.C.M. 1947, 83-607.

Cross-References

Claims against the state, Title 17, ch. 8, part 2.

CHAPTER 2

CONSTRUCTION CONTRACTS

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18-2-408. Penalty for violation.
18-2-409 through 18-2-420 reserved.
18-2-421. Notice.
18-2-422. Bid specification and contract to contain prevailing wage rate.
18-2-423. Submission of payroll records.
18-2-424. Enforcement.

Chapter Cross-References

County contracts, Title 7, ch. 5, part 23.

Contract authority — housing authority, Title 7, ch. 15.

Veterans' preference, 10-2-201 through 10-2-206.

Public contractor's licenses, Title 15, ch. 50.

Construction authority — regents, 20-25-402.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Freedom from discrimination in public contracts, 49-3-207.

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Construction authority — Department of Highways, 60-3-101.

Construction authority — Department of Commerce — airports, 67-2-403.

Construction authority — drainage districts, 67-11-103, 67-11-201.

Contract authority of public bodies to acquire open-space land, 76-6-109.

Construction authority — soil and water conservation districts, 76-15-215, 76-15-320, 76-15-321, 76-15-401 through 76-15-406, 76-15-501.

Construction authority — Department of Natural Resources and Conservation — waterworks, 85-1-206, 85-1-211.

Construction authority — irrigation districts, 85-7-1901 through 85-7-1908.

Construction authority — Department of Fish, Wildlife, and Parks — fish hatcheries, 87-1-222, 87-3-201.

Contract authority — Board of Housing, 90-6-104.

Part 1

General Provisions

Part Cross-References

Statewide building construction standards, Title 50, ch. 60.

18-2-101. Definitions of building and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes:

(a) a building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) a building, facility, or structure at a state institution;

(c) a building, facility, or structure owned or to be owned by a state agency, including the department of highways;

(2) "building" does not include:

(a) a building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) a facility or structure used as a component part of a highway or water conservation project;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 4, Ch. 388, L. 1979; amd. Sec. 1, Ch. 67, L. 1981; amd. Sec. 1, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: In (3) after "alteration" inserted "repair, maintenance" twice, and after "remodeling", deleted "but does not include the repair or maintenance of an existing building".

1981 Amendment: Substituted language in (3) for "construction includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration".

18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than $25,000 may not be constructed without the consent of the legislature. When a building costing more than $25,000 is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-312 if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys if the construction of the building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974; R.C.M. 1947, 82-3316.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

Employment security building bonds, Title 17, ch. 5, part 6.

Long-range building program and budget, Title 17, ch. 7, part 2.

Revenue-producing facilities — powers of regents, 20-25-302.

Construction project at Montana State University and Eastern Montana College, 20-25-431.

18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 487, L. 1977; R.C.M. 1947, 82-3317; amd. Sec. 1, Ch. 16, L. 1979; amd. Sec. 15, Ch. 281, L. 1983; amd. Sec. 2, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 281, at end of (6), substituted "regulation account in the state special revenue fund" for "revolving account in the revolving fund".

Chapter 491 inserted (2); and in (4), after "alteration" inserted "repair, maintenance,".

Cross-References

Bond issues, Title 17, ch. 5.

Long-range building program bonds, Title 17, ch. 5, part 4.

Bids required — advertising, 18-2-301.

School districts — conflicts of interest, letting contracts, and calling for bids, 20-9-204.

Construction project at Montana State University and Eastern Montana College, 20-25-431.

18-2-104. Scheduling of state building program. The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 78-910.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for such buildings;

(4) issue and sell bonds and other securities;

(5) maintain an inventory of all buildings;

(6) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against moneys available for construction.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974; R.C.M. 1947, 82-3318.

Cross-References

Property management, Title 2, ch. 17.

Contract provisions necessary for federal funds, 18-2-313.

Building construction standards, Title 50, ch. 60.

18-2-106. Pecuniary interest prohibited. Neither the director of administration nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

History: En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974; R.C.M. 1947, 82-3321.

Cross-References

Standards of conduct for public employees, Title 2, ch. 2.

Illegal interests in contracts, 45-7-401.

18-2-107. Deposit of capitol building grant revenues. (1) The state treasurer is hereby authorized and instructed to deposit in a capital projects fund all revenue from the capitol building land grant.

(2) The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions thereto in accordance with the provisions of section 12 of The Enabling Act.

History: (1)En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "a capital projects fund" for "the federal and private revenue fund".

Cross-References

Deposit of funds in the hands of the State Treasurer, 17-6-101.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

Cross-References

Building construction standards, Title 50, ch. 60.

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(6); or

(c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed $25,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "with the exception of repair or maintenance projects".

Cross-References

Preparation of building programs and submission to Department of Administration, 17-7-202.

Architecture, Title 37, ch. 65.

18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Cross-References

Appointment of architect, 18-3-102.

18-2-113. Architects on public buildings to be certified. A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a certificate granted by the board of architects entitling him to practice architecture in this state.

History: En. Sec. 1, Ch. 190, L. 1953; amd. Sec. 32, Ch. 350, L. 1974; amd. Sec. 6, Ch. 544, L. 1977; R.C.M. 1947, 66-113.

Cross-References
Appointment of architect, 18-3-102.
Licensing of architects, Title 37, ch. 65, part 3.
Contractors to be licensed, 37-71-203.

18-2-114. Seal and signature of architect on plans. All architectural plans and specifications for public buildings of the state of Montana or any agency thereof or of any county, city, or school district of the state shall bear the seal and signature of the architect responsible therefor.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

Cross-References
Seal of architect, 37-65-308.

18-2-115. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

18-2-116 through 18-2-120 reserved.

18-2-121. Engineer or land surveyor to supervise project. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects or land surveyor for all land surveying projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part).

Cross-References
Licensing engineers and land surveyors, Title 37, ch. 67, part 3.

18-2-122. Plans to bear seal. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the land surveyor for land surveying projects or licensed architect for architectural projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part).

Cross-References
Seal of architect, 37-65-308.
Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees, 37-67-314.
Penalty for failure to require seal, 37-67-332.

Part 2

Performance, Labor, and Materials Bonds

Part Cross-References
Bond of contractor in rural improvement district, 7-12-2138.
Bids and contractor's bonds, 17-5-603, 17-5-613.
Contractor's bond for wages, 39-3-703, 39-3-706.
Highways — bidder's security — contractor's bond, 60-2-113.

18-2-201. Bonding requirements. (1) Whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with two or more sureties acceptable to the governmental body letting the contract, or with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

(a) faithfully perform all of the provisions of such contract;

(b) pay all laborers, mechanics, subcontractors, and materialmen; and

(c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 1, Ch. 602, L. 1981.

Compiler's Comments
1981 Amendment: In (1) near the end of the lead-in to (a), (b), and (c), inserted "acceptable to the governmental body letting the contract" after "sureties" and inserted "licensed" before "surety company"; added subsection (3); and made minor changes in punctuation.

Cross-References
Suretyship, Title 28, ch. 11, part 4.

18-2-202. Failure to require bond. If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation shall fail to take such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor.

History: **En. Sec. 3, Ch. 20, L. 1931; re-en. Sec. 5668.43, R.C.M. 1935; R.C.M. 1947, 6-403; amd. Sec. 2, Ch. 602, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted ", cash, checks, drafts, money orders, or certificates of deposit" after "such bond" in the middle of the section.

Cross-References

Liens, Title 71, ch. 3.

18-2-203. Amount and terms of bond. The bond mentioned in 18-2-201 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement and shall be to the state of Montana, except in cases of cities and towns, in which case such municipality may by general ordinance fix and determine the amount of such bond and to whom such bond shall run, provided that the same shall not be for a less amount than 25% of the contract price of any such improvement and may designate that the same shall be payable to such city or town and not to the state of Montana.

History: **En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part).**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

18-2-204. Right of action on bond — notice. (1) All such persons mentioned in 18-2-201 shall have a right of action in his or her or their own name or names on any bond furnished under the terms of this part for work done by such laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the prosecution of such work or the making of such improvements, provided that such persons shall not have any right of action on such bond for any sum whatever unless within 90 days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of such work or the making of such improvement shall present to and file with such board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for or upon such contract or work) has a claim in the sum of .... dollars (here insert the amount) against the bond taken from .... (here insert the name of the principal and surety or sureties upon such bond) for the work of .... (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed) ....”

(2) Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part).

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

18-2-205. Effect of dealing with subcontractor. Any corporation, person, or persons performing such services or furnishing such provender, provisions, supplies, or material to any subcontractor shall have the same right under the provisions of such bond as if such work, services, provender, provisions, supplies or material was furnished to the original contractor.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part).

Cross-References

Liens, Title 71, ch. 3.

18-2-206. Notice to contractor concerning subcontractor. (1) Every person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery of such provender, material, supplies, or provisions to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that:

(a) such person, firm, or corporation has commenced to deliver provender, provisions, materials, or supplies for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished; and

(b) such contractor and his bond will be held for the same.

(2) No suit or action shall be maintained in any court against the contractor or his bond to recover for such provender, provisions, material, or supplies or any part thereof unless the provisions of this part have been complied with.

History: En. Sec. 2, Ch. 20, L. 1931; re-en. Sec. 5668.42, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1967; R.C.M. 1947, 6-402.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

18-2-207. Costs — attorneys’ fees. In any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the prevailing party shall be entitled to recover, in addition to all other costs, attorneys’ fees in such sum as the court shall adjudge reasonable, provided, however, that no attorneys’ fees shall be allowed in any suit or action brought or instituted before the expiration of 30 days following the date of filing of the notice hereinbefore mentioned.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part).

Cross-References

Costs and attorneys' fees, Title 25, ch. 10, parts 1 through 3.

Suretyship, Title 28, ch. 11, part 4.

18-2-208. Exceptions. (1) The provisions of this part shall not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(2) Any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby and not in conflict herewith.

(3) Nothing herein referred to with reference to the giving of such notice within 90 days from and after completion of the contract and acceptance of the work shall be construed to prevent or delay the payment of moneys due the contractor under the terms and conditions specified in his contract.

History: (1)En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; Sec. 6-401, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; Sec. 6-404, R.C.M. 1947; R.C.M. 1947, 6-401(part), 6-404(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3

Contract Requirements and Restrictions

Part Cross-References

Illegal interest in contracts, 45-7-401.

18-2-301. Bids required — advertising. (1) It is unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is $25,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform such work and stating the time and place bids will be considered.

(2) All such work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder.

(4) This section does not apply to work done by inmates at an institution in the department of institutions.

History: (1) thru (3)En. Sec. 1, Ch. 149, L. 1927; re-en. Sec. 259.1, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1961; amd. Sec. 1, Ch. 97, L. 1977; Sec. 82-1131, R.C.M. 1947; (4)En. Sec. 2, Ch. 142, L.

1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974; Sec. 82-1131.1, R.C.M. 1947; R.C.M. 1947, 82-1131, 82-1131.1; amd. Sec. 2, Ch. 16, L. 1979.

Cross-References

Supervision of construction of buildings, 18-2-103.

18-2-302. Bid security. Each bid must be accompanied by bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

History: En. Sec. 3, Ch. 149, L. 1927; re-en. Sec. 259.3, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-1133.

Cross-References

Advertisement for bid to specify required security, 18-1-202.

Form of security, 18-1-203.

Forfeiture — bidder's liability, 18-1-204.

Suretyship, Title 28, ch. 11, part 4.

Acceptance and issuance of drafts and letters of credit, 32-1-437.

Certified checks, 32-1-441.

18-2-303 through 18-2-310 reserved.

18-2-311. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in 37-71-101, who has been awarded a contract by the state of Montana or any board, commission, or department thereof or by any board of county commissioners or by any city or town council or agency thereof for the construction or reconstruction of a public work and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals or enter into any additional contract with any public agency of the state of Montana, county, or city thereof until he has completely executed the contract upon which he is working beyond contract time and all supplemental agreements thereto.

History: En. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

Cross-References

Competitive bidding, 60-2-112.

18-2-312. Excusable delays. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "act of God".

History: En. Sec. 2, Ch. 141, L. 1967; R.C.M. 1947, 82-1928.

Cross-References

When delay or failure to perform or offer to perform excused, 28-1-1301.

18-2-313. Contract provisions necessary for federal funds. In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied.

History: En. Sec. 1, Ch. 43, Ex. L. 1933; re-en. Sec. 269.1, R.C.M. 1935; amd. Sec. 2, Ch. 97, L. 1977; R.C.M. 1947, 82-1147.

Cross-References

Federal revenues and endowments, Title 17, ch. 3.

Authority to construct buildings, 18-2-102.

General powers and duties of Department of Administration, 18-2-105.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

18-2-314. Cost-plus system invalid. Any contracts made by, on behalf of, or for the state of Montana which shall directly or indirectly recognize the cost-plus system or principle shall be void and of no effect and this section shall stand as a notice of the invalidity of any such contract.

History: En. Sec. 5, Ch. 149, L. 1927; re-en. Sec. 259.5, R.C.M. 1935; R.C.M. 1947, 82-1135.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

What conditions void, 28-2-707.

18-2-315. State purchasing not affected. Nothing contained in 18-2-301, 18-2-302, or 18-2-314 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

History: En. Sec. 6, Ch. 149, L. 1927; re-en. Sec. 259.6, R.C.M. 1935; amd. Sec. 55, Ch. 326, L. 1974; R.C.M. 1947, 82-1136.

Cross-References

Procurement generally, Title 18, ch. 4.

Special purchasing conditions, Title 18, ch. 5.

Part 4

Special Conditions — Labor

Part Cross-References

Wage protection for employees of mineral and oil industry, 39-3-501.

Hours of labor for employees on state-aided projects, 39-4-107.

Letting of contracts on state and federal-aid highways, 60-2-111.

18-2-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Labor" is hereby defined to be all services performed in the construction, repair, or maintenance of all state, county, municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) A "bona fide resident of Montana" is hereby declared to be a person who, at the time of his employment and immediately prior thereto, has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state has been coupled with intention to make it his home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor shall under no circumstance be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

(5) (a) "Standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed," means those wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification, or type of worker needed to complete a contract under this part.

(b) When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification, or type of worker needed to complete the contract.

History: (1), (4)En. Sec. 2, Ch. 102, L. 1931; re-en. Sec. 3043.2, R.C.M. 1935; Sec. 41-702, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 139, L. 1981; (5)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-702; amd. Sec. 1, Ch. 139, L. 1981.

Compiler's Comments

1981 Amendment: Added opening phrase of section; added subsections (2) and (3).

Cross-References

Labor — wages and wage protection, Title 39, ch. 3.

Freedom from discrimination in public contracts, 49-3-207.

18-2-402. Standard prevailing rate of wages. (1) The Montana commissioner of labor may determine the standard prevailing rate of wages in the county or locality in which the contract is to be performed. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this part may be ascertained.

(2) The provisions of this part do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(3) In no instances where this part is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(1), (4), (5).

Cross-References

Labor — wages and wage protection, Title 39, ch. 3.

18-2-403. Preference of Montana labor in public works — wages — federal exception. (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality in which the work is being performed.

(2) No contract may be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(3) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part); amd. Sec. 2, Ch. 58, L. 1979; amd. Sec. 2, Ch. 139, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "bid specification and the" between "inserted in the" and "contract" in (1); added subsection (3).

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Impartiality to be shown in letting contracts — preference to residents, 18-1-111.

Montana product preference provisions, 18-1-112.

Authority to construct buildings, 18-2-102.

General powers and duties of Department of Administration, 18-2-105.

Contract provisions necessary for federal funds, 18-2-313.

Nondiscrimination provision in all public contracts, 49-3-207.

18-2-404. Approval of contract — bond. (1) All public works contracts under this part shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers.

(2) In all contracts entered into under the provisions of this part at least $1,000 of the contract price shall be withheld at all times until the termination of the contract.

History: (1)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; Sec. 41-703, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-703(part).

Cross-References

Bonding requirements, 18-2-201.

Executed versus executory contracts, 28-2-104.

What contracts must be in writing, 28-2-903.

18-2-405. When fringe benefits paid as wages. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part).

Cross-References

Contractors' bonds for wages and benefits, Title 39, ch. 3, part 7.

Collective bargaining for public employees, Title 39, ch. 31.

18-2-406. Posting wage scale. Contractors, subcontractors, and employers who are performing work or providing services under public works contracts as provided in this part shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(2).

Cross-References

Wages and wage protection, Title 39, ch. 3.

18-2-407. Forfeiture for failure to pay prevailing wages. (1) Any contractor, subcontractor, or employer who shall pay workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the contracting agency the sum of $25 a day for each worker so underpaid.

(2) Whenever it shall appear to the contracting agency or to the Montana commissioner of labor that there are insufficient moneys due to the contractor or the employer under the terms of the contract to cover such penalties, the Montana commissioner of labor may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all such penalties and forfeitures due. Nothing in this part shall prevent the individual worker who has been underpaid from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(3).

Cross-References

Payment of wages, Title 39, ch. 3, part 2.

Contractors' bonds for wages and benefits, Title 39, ch. 3, part 7.

18-2-408. Penalty for violation. (1) If any person, firm, or corporation shall fail to comply with the provisions of this part, the state, county, municipal, or school officers who have executed the contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the contract and said money shall be credited to the proper funds of the state, county, municipal, or school districts.

(2) Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court.

(3) Whenever any action shall have been instituted in any district court in this state against any person, firm, or corporation for the violation of this part, the court in which said action is pending shall be and it is hereby authorized to issue an injunction to restrain any such person, firm, or corporation from proceeding with his or its contract with the state, county, municipal, or school districts, pending the final determination of said action so instituted.

History: En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; R.C.M. 1947, 41-703(part).

Cross-References
Damages, Title 27, ch. 1, part 2.
Injunctions, Title 27, ch. 19.
Contractors' bonds for wages and benefits, Title 39, ch. 3, part 7.

18-2-409 through 18-2-420 reserved.

18-2-421. Notice. When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project shall be sent to the department. However, in the case of projects that amount to $50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court as provided in 18-2-407 does not begin until the public contracting agency notifies the department of its acceptance of the public works project.
History: En. Sec. 3, Ch. 139, L. 1981.

18-2-422. Bid specification and contract to contain prevailing wage rate. All bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project.
History: En. Sec. 4, Ch. 139, L. 1981.

18-2-423. Submission of payroll records. If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project.
History: En. Sec. 5, Ch. 139, L. 1981.

18-2-424. Enforcement. If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or his authorized representative may issue subpoenas compelling the production of those records.
History: En. Sec. 6, Ch. 139, L. 1981.

CHAPTER 3

STATE BUILDING LEASES

Part 1 — General Provisions

Section
18-3-101. Authority to lease with option to purchase.
18-3-102. Appointment of architect.
18-3-103. Awarding contract.
18-3-104. Contract provisions.
18-3-105. Location of building.
18-3-106. Security pledge.
18-3-107. Rent payments.

Chapter Cross-References
Illegal interest in contracts, 45-7-401.
Statewide building construction standards, Title 50, ch. 60.

Part 1

General Provisions

18-3-101. Authority to lease with option to purchase. When authorized by a vote of two-thirds of the members of each house of the legislature, the department of administration shall have the authority, as part of the long-range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

General powers and duties of Department of Administration, 18-2-105.

18-3-102. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this chapter, subject to the approval of the board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

Cross-References

Appointment of architects and consulting engineers, 18-2-112.

18-3-103. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

Cross-References

Construction contracts — general provisions, Title 18, ch. 2, part 1.

Bids required — advertising, 18-2-301.

18-3-104. Contract provisions. The rental contract shall be for a period not to exceed 20 years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of $50,000. The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.

Cross-References

Contracts — formation and interpretation, Title 28, ch. 2 and 3.

Trustees' Powers Act, Title 72, ch. 21.

18-3-105. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale or lease of any interest in state lands, the contract must have prior approval of the board of land commissioners.

History: En. 82-3315.2 by Sec. 2, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.2.

Cross-References
Board of Land Commissioners — power to sell, lease, or exchange certain state lands, 77-1-204.

18-3-106. Security pledge. To insure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this part.

History: En. 82-3315.3 by Sec. 3, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.3.

Cross-References
Tax power inalienable, Art. VIII, sec. 2, Mont. Const.
Taxation, Title 15.

18-3-107. Rent payments. Each month the department or departments occupying the building shall pay rent in an amount determined by the department of administration to be sufficient to pay the total cost of renting and maintaining the building. All rents collected shall be deposited in a separate account and are hereby appropriated for the purpose of paying the contracted rental payments and the expense of maintaining the building. At any time the amount in the account is insufficient to pay a rental payment that is due, the department of administration is authorized to transfer from the general fund an amount sufficient to make the payment.

History: En. 82-3315.6 by Sec. 6, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.6.

Cross-References
Fund structure, 17-2-102.
Rights of tenant for years or at will, 70-16-104.

CHAPTER 4

MONTANA PROCUREMENT ACT

Part 1 — General Provisions

Section
18-4-101. Repealed.
18-4-102. Repealed.
18-4-103. Repealed.
18-4-104. Renumbered 18-4-133 by Code Commissioner, 1983.
18-4-105. Renumbered 18-4-141 by Code Commissioner, 1983.
18-4-106 through 18-4-110 reserved.
18-4-111. Renumbered 2-17-501 by Code Commissioner, 1983.
18-4-112 through 18-4-120 reserved.
18-4-121. Short title.
18-4-122. Purpose.
18-4-123. Definitions.
18-4-124. Local government adoption of procurement provisions.
18-4-125. Collection of data concerning public procurement.
18-4-126. Public access to procurement information — records — retention.
18-4-127 through 18-4-130 reserved.
18-4-131. Supplementary general principles of law applicable — requirement of good faith.
18-4-132. Application.
18-4-133. Purchases exempt from general requirements.
18-4-134 through 18-4-140 reserved.
18-4-141. Contract transfers and collusion prohibited — violations and penalty.

Part 2 — Duties of Department

18-4-201 through 18-4-214. Repealed.
18-4-215 through 18-4-220 reserved.
18-4-221. General procurement authority and duties of department — rules.
18-4-222. Delegation of authority by department.
18-4-223. State procurement rules — delegation — existing rights.
18-4-224. Contract clauses — rules.
18-4-225. Cost principles — rules.
18-4-226. Surplus supply — rules.
18-4-227 through 18-4-230 reserved.
18-4-231. Definition of specification.
18-4-232. Specifications — rules.
18-4-233. Using agencies' advice.
18-4-234. Competition.
18-4-235 through 18-4-240 reserved.
18-4-241. Authority to remove or suspend from vendors' list.
18-4-242. Remedies prior to and after award.

Part 3 — Procurement Procedure

18-4-301. Definitions.
18-4-302. Methods of source selection.
18-4-303. Competitive sealed bidding.
18-4-304. Competitive sealed proposals.
18-4-305. Small purchases.
18-4-306. Sole source procurement — records.
18-4-307. Cancellation of invitations for bids or requests for proposals.
18-4-308. Nonresponsibility of bidders and offerors — nondisclosure.
18-4-309. Prequalification of suppliers.
18-4-310. Types of contracts.
18-4-311. Approval of accounting system.
18-4-312. Contract performance security.
18-4-313. Contracts — terms, extensions, and time limits.
18-4-314. Reporting of anticompetitive practices.

Part 4 — Cooperative Purchasing

18-4-401. Definitions.
18-4-402. Cooperative purchasing authorized.
18-4-403. Sale, acquisition, or use of supplies by a public procurement unit.
18-4-404. Cooperative use of supplies or services.
18-4-405. Joint use of facilities.
18-4-406. Information and services — fees.
18-4-407. Review of procurement requirements.

Chapter Cross-References

Officer not to be purchaser in sale, 2-2-202.

Property management, Title 2, ch. 17.

Purchase of rural improvement districts, 7-12-2131 through 7-12-2137.

Encumbrance of purchase orders, 17-7-303.

State purchasing not affected, 18-2-315.

Highway Patrol equipment, 44-1-303.

Attorney General authorized to purchase equipment for teletypewriter communications system, 44-2-302, 44-2-312 through 44-2-316.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Department of Fish, Wildlife, and Parks — land acquisition, 87-1-209, 87-1-301.

Part 1

General Provisions

18-4-101. Repealed. Sec. 53, Ch. 519, L. 1983.

History: (1), (2)En. 82-1902.1 by Sec. 8, Ch. 97, L. 1977; Sec. 82-1902.1, R.C.M. 1947; (3)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch.

301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; R.C.M. 1947, 82-1902.1, 82-1917(part); amd. Sec. 1, Ch. 597, L. 1979.

18-4-102. Repealed. Sec. 53, Ch. 519, L. 1983.

History: (1), (2)En. Sec. 8, Ch. 66, L. 1923; re-en. Sec. 293.8, R.C.M. 1935; amd. Sec. 2, Ch. 301, L. 1971; amd. Sec. 1, Ch. 496, L. 1973; amd. Sec. 9, Ch. 242, L. 1974; amd. Sec. 73, Ch. 326, L. 1974; Sec. 82-1918, R.C.M. 1947; (3)En. Sec. 11, Ch. 66, L. 1923; re-en. Sec. 293.11, R.C.M. 1935; amd. Sec. 76, Ch. 326, L. 1974; Sec. 82-1921, R.C.M. 1947; R.C.M. 1947, 82-1918(1), 82-1921(part); amd. Sec. 2, Ch. 597, L. 1979.

18-4-103. Repealed. Sec. 2, Ch. 175, L. 1979.

History: En. 82-1915.1 by Sec. 70, Ch. 326, L. 1974; R.C.M. 1947, 82-1915.1.

18-4-104. Renumbered 18-4-133 by Code Commissioner, 1983.

18-4-105. Renumbered 18-4-141 by Code Commissioner, 1983.

18-4-106 through 18-4-110 reserved.

18-4-111. Renumbered 2-17-501 by Code Commissioner, 1983.

18-4-112 through 18-4-120 reserved.

18-4-121. Short title. This chapter may be cited as the "Montana Procurement Act".

History: En. Sec. 1, Ch. 519, L. 1983.

18-4-122. Purpose. The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

History: En. Sec. 2, Ch. 519, L. 1983.

18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means a duly authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from such an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission thereof of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of his authority.

(17) "Purchasing agency" means any governmental body, other than the department, which is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include consulting services as defined in 18-8-102, those services listed in 18-8-103, employment agreements or collective bargaining agreements, the provision by providers of human services regulated by a state agency, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state which utilizes any supplies or services procured under this chapter.

History: **En. Sec. 3, Ch. 519, L. 1983.**

18-4-124. Local government adoption of procurement provisions. A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

History: **En. Sec. 45, Ch. 519, L. 1983.**

18-4-125. Collection of data concerning public procurement. All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

History: **En. Sec. 11, Ch. 519, L. 1983.**

18-4-126. Public access to procurement information — records — retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

History: **En. Secs. 5, 26, Ch. 519, L. 1983.**

18-4-127 through 18-4-130 reserved.

18-4-131. Supplementary general principles of law applicable — requirement of good faith. (1) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, supplement the provisions of this chapter, except that writs of mandamus and prohibition issued pursuant to Title 27, chapters 26 and 27, may not be used as a remedy for violations of this chapter.

(2) This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

History: **En. Sec. 4, Ch. 519, L. 1983.**

18-4-132. Application. (1) Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract; but this chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. Nothing in this chapter or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to construction contracts.

History: **En. Sec. 44, Ch. 519, L. 1983.**

18-4-133. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of this chapter for the purchase of suitable clothing by the department of institutions for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

History: **En. Sec. 9, Ch. 66, L. 1923; re-en. Sec. 293.9, R.C.M. 1935; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974; amd. Sec. 1, Ch. 230, L. 1977; R.C.M. 1947, 82-1919; amd. Sec. 1,**

Ch. 418, L. 1979; amd. Sec. 1, Ch. 74, L. 1981; amd. Sec. 47, Ch. 519, L. 1983; MCA 1981, 18-4-104; redes. 18-4-133 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: In (3), after "the provisions of" changed "part 2 of this chapter" to "this chapter".

1981 Amendment: Substituted "residents of its institutions and community-based programs" for "residents of juvenile correctional facilities and the Boulder River school and hospital" in (3).

Cross-References

Course of dealing and usage of trade, 30-1-205.

Powers and duties of Department of Institutions, 53-1-203.

18-4-134 through 18-4-140 reserved.

18-4-141. Contract transfers and collusion prohibited — violations and penalty. (1) No contract or order or any interest therein may be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. No approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their obligations to the state under the contract or order.

(2) Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section or both void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; re-en. Sec. 293.12, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977; R.C.M. 1947, 82-1922; amd. Sec. 1, Ch. 52, L. 1983; MCA 1981, 18-4-105; redes. 18-4-141 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: In (1), inserted ", assigned, or subcontracted" after "transferred" at the beginning of the first sentence, inserted "without the express written approval of the state" after "given to any other party", substituted "unapproved transfer, assignment, or subcontract" for "such transfer" at the end of first sentence, and inserted last sentence.

Cross-References

Breach of contract, 27-1-311.

Assignment of nonnegotiable written contract, 28-2-206.

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

U.C.C. — sales — delegation of performance, assignment of rights, 30-2-210.

Unfair trade practices, Title 30, ch. 14, part 2.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Part 2

Duties of Department

18-4-201 through 18-4-214. Repealed. Sec. 53, Ch. 519, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

18-4-201. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2)En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1925; re-en. Sec. 287, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961; amd. Sec. 60, Ch. 326, L. 1974; Sec. 82-1904, R.C.M. 1947; R.C.M. 1947, 82-1904, 82-1917(1); amd. Sec. 3, Ch. 597, L. 1979.

18-4-202. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(part); amd. Sec. 4, Ch. 597, L. 1979.

18-4-203. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(3); amd. Sec. 5, Ch. 597, L. 1979.

18-4-204 through 28-4-210. Reserved.

18-4-211. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2)En. Sec. 8, Ch. 197, L. 1921; re-en. Sec. 291, R.C.M. 1921; re-en. Sec. 291, R.C.M. 1935; amd. Sec. 63, Ch. 326, L. 1974; Sec. 82-1908, R.C.M. 1947; R.C.M. 1947, 82-1908, 82-1917(part).

18-4-212. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(part); amd. Sec. 3, Ch. 58, L. 1979.

18-4-213. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2) thru (4)En. Sec. 11, Ch. 66, L. 1923; re-en. Sec. 293.11, R.C.M. 1935; amd. Sec. 76, Ch. 326, L. 1974; Sec. 82-1921, R.C.M. 1947; R.C.M. 1947, 82-1917(5), 82-1921(part); amd. Sec. 6, Ch. 597, L. 1979.

18-4-214. En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R.C.M. 1921; re-en. Sec. 288, R.C.M. 1935; amd. Sec. 4, Ch. 80, L. 1961; amd. Sec. 61, Ch. 326, L. 1974; R.C.M. 1947, 82-1905; amd. Sec. 7, Ch. 597, L. 1979.

18-4-215 through 18-4-220 reserved.

18-4-221. General procurement authority and duties of department — rules. (1) Except as otherwise provided in this chapter, the department shall adopt rules, consistent with this chapter, governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of this chapter. The department may audit and monitor the implementation of its rules and the requirements of this chapter.

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; and

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

History: En. Sec. 6, Ch. 519, L. 1983.

18-4-222. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

History: En. Sec. 7, Ch. 519, L. 1983.

18-4-223. State procurement rules — delegation — existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

History: **En. Sec. 8, Ch. 519, L. 1983.**

18-4-224. Contract clauses — rules. (1) The department may adopt rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the contracting parties may mutually agree; or

(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.

(3) The department may adopt rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

History: **En. Sec. 32, Ch. 519, L. 1983.**

18-4-225. Cost principles — rules. The department shall adopt rules setting forth cost principles which must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. However, if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

History: **En. Sec. 33, Ch. 519, L. 1983.**

18-4-226. Surplus supply — rules. (1) As used in this section, the following definitions apply:

(a) "Supplies" means supplies owned by the state.

(b) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(3) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

History: **En. Secs. 34 thru 36, Ch. 519, L. 1983.**

18-4-227 through 18-4-230 reserved.

18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234, "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

History: **En. Sec. 28, Ch. 519, L. 1983.**

18-4-232. Specifications — rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

History: **En. Sec. 29, Ch. 519, L. 1983.**

18-4-233. Using agencies' advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

History: **En. Sec. 30, Ch. 519, L. 1983.**

18-4-234. Competition. All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

History: **En. Sec. 31, Ch. 519, L. 1983.**

18-4-235 through 18-4-240 reserved.

18-4-241. Authority to remove or suspend from vendors' list. (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been issued for an offense that would be a cause for removal under subsection (3), in which case the suspension must, at the request of the attorney general, remain in effect until after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in (i) and (ii) of this subsection, of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend; and

(c) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

History: En. Sec. 9, Ch. 519, L. 1983.

18-4-242. Remedies prior to and after award. (1) If a solicitation or award of a contract is in violation of law, the department may apply the remedies provided in subsections (2) and (3).

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if such action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3).

History: En. Sec. 10, Ch. 519, L. 1983.

Part 3

Procurement Procedure

18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(7) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

History: En. Sec. 12, Ch. 519, L. 1983.

18-4-302. Methods of source selection. Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, and chapters 5 and 8 of this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

History: En. Sec. 13, Ch. 519, L. 1983.

18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(5) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(6) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(7) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an

invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

History: En. Sec. 14, Ch. 519, L. 1983.

18-4-304. Competitive sealed proposals. (1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award.

(5) The request for proposals must state the relative importance of price and other evaluation factors.

(6) As provided in the request for proposals and under rules adopted by the department, discussions may be conducted with responsible offerors who submit apparently responsive proposals for the purpose of clarification, to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made.

History: En. Sec. 15, Ch. 519, L. 1983.

18-4-305. Small purchases. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase under this section.

History: En. Sec. 16, Ch. 519, L. 1983.

18-4-306. Sole source procurement — records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that there is only one source for the required supply or service item. The department may require the submission of cost or pricing data in connection with an award under this section.

(2) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(3) The record must be available for public inspection.

History: **En. Secs. 17, 27, Ch. 519, L. 1983.**

18-4-307. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

History: **En. Sec. 18, Ch. 519, L. 1983.**

18-4-308. Nonresponsibility of bidders and offerors — nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.

History: **En. Sec. 19, Ch. 519, L. 1983.**

18-4-309. Prequalification of suppliers. Prospective suppliers may be prequalified for particular types of supplies and services. Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers.

History: **En. Sec. 20, Ch. 519, L. 1983.**

18-4-310. Types of contracts. Subject to the limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.

History: **En. Sec. 21, Ch. 519, L. 1983.**

18-4-311. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

(1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

History: **En. Sec. 22, Ch. 519, L. 1983.**

18-4-312. Contract performance security. (1) For state contracts for the procurement of supplies and services, the department may in its discretion require the filing of security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors.

(2) If contract performance security is required under subsection (1), the following types of security may be required to be deposited with the state:

(a) a good and sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(3) The amount and type of the security mentioned above must be determined by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 25% of the total contract price, and must be payable to the state of Montana. In determining the amount and type of security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. The department may adopt rules to assist it in making this determination and in protecting the state in dealing with irrevocable letters of credit. Any contract security requirements must be included in the invitations for bids or requests for proposals.

(4) The provisions of chapter 2, parts 2 and 3 of this title do not apply to procurements under this chapter.

History: **En. Sec. 23, Ch. 519, L. 1983.**

18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems and data processing equipment for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: **En. Sec. 24, Ch. 519, L. 1983.**

Cross-References

Retroactive application, 18-4-132.

18-4-314. Reporting of anticompetitive practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

History: **En. Sec. 25, Ch. 519, L. 1983.**

Part 4

Cooperative Purchasing

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

History: **En. Sec. 37, Ch. 519, L. 1983.**

18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

History: **En. Sec. 38, Ch. 519, L. 1983.**

18-4-403. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of part 3.

History: **En. Sec. 39, Ch. 519, L. 1983.**

18-4-404. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of part 3, with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

History: En. Sec. 40, Ch. 519, L. 1983.

18-4-405. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

History: En. Sec. 41, Ch. 519, L. 1983.

18-4-406. Information and services — fees. (1) Upon request, the department may make available to public procurement units certain services, including but not limited to the following:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified products lists;

(f) source information;

(g) common use commodities listings;

(h) supplier prequalification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;

(l) contracts or published summaries thereof, including price and time of delivery information; and

(m) cooperative purchasing.

(2) The state, through the department, may provide technical services, including but not limited to the following:

(a) development of product specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(3) The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

History: En. Sec. 42, Ch. 519, L. 1983.

18-4-407. Review of procurement requirements. To the extent possible, the department may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The department may make available all such information to any public procurement unit upon request.

History: En. Sec. 43, Ch. 519, L. 1983.

CHAPTER 5

SPECIAL PURCHASING CONDITIONS

Part 1 — Sheltered Workshops

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Part 1

Sheltered Workshops

Part Cross-References
Sheltered workshops, Title 53, ch. 7, part 2.

18-5-101. Definitions. As used in 18-5-101 through 18-5-103, the following definitions apply:

(1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to disabled vocationally handicapped individuals, in whole or in part, which:

(a) holds a current certificate issued by the United States department of labor for either one or all of the following:

(i) evaluation or training;

(ii) a regular work program; or

(iii) work activity center;

(b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of such facility not otherwise included in 18-5-101 through 18-5-103;

(c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under 18-5-101 through 18-5-103, employs and trains vocationally handicapped individuals for not less than 75% of the man-hours of direct labor required for the manufacture of products or the provision of service; and

(d) is hereinafter referred to as a "facility".

(2) "Department" means the department of administration.

(3) "Vocationally handicapped" means an individual under a physical, mental, or emotional disability which constitutes a substantial handicap to employment and prevents the individual under the disability from engaging in normal competitive employment.

History: **En. 82-1941 by Sec. 1, Ch. 547, L. 1977; R.C.M. 1947, 82-1941.**

Cross-References

Nonprofit corporations, Title 35, ch. 2.

Vocational rehabilitation, Title 53, ch. 7.

Sheltered workshops, definitions, 53-7-202.

Developmentally disabled, Title 53, ch. 20.

18-5-102. Duties and powers of department of administration. (1) The department shall establish and publish a listing of the products and services purchased by the state. From this list, facilities may select products or services to be produced or provided by one or more facilities. A product or service shall be removed from the list approved for facilities whenever the department ascertains that the product or service exceeds 20% of the gross sales of any business in Montana producing that product or providing that service.

(2) The department may contract with a nonprofit organization to:

(a) certify facilities;

(b) provide technical assistance to facilities on matters of product or service capabilities;

(c) facilitate distribution of orders among facilities and to insure equal opportunity in obtaining orders.

(3) The department shall determine the fair market price to be charged for products and services on the procurement list which is competitive with readily available alternative sources. In determining and revising the prices of products and services, the department must give consideration to reasonable costs of labor, materials, and overhead and a percentage of gross sales to fund the activities of the nonprofit organization specified in (2)(a), (2)(b), and (2)(c) above.

(4) The department shall adopt, revise, and amend rules to implement 18-5-101 through 18-5-103 in accordance with the procedures of the Montana Administrative Procedure Act.

History: **En. 82-1942 by Sec. 2, Ch. 547, L. 1977; R.C.M. 1947, 82-1942.**

Cross-References
Proof of market price — time and place, 30-2-723.
Sheltered workshops — legislative findings and purpose, 53-7-201.
Purchase of sheltered employment services, 53-7-203.

18-5-103. Procurement requirements. State departments, institutions, and agencies shall, after promulgation of the product and service list, procure listed products and services from a facility. The provisions of this title relating to competitive bidding do not apply to purchases made in accordance with 18-5-101 through 18-5-103.

History: En. 82-1943 by Sec. 3, Ch. 547, L. 1977; R.C.M. 1947, 82-1943.

Cross-References
Purchase of sheltered employment services, 53-7-203.

18-5-104. Repealed. Sec. 7, Ch. 58, L. 1979.

History: En. 82-1938, 82-1939, 82-1940 by Secs. 1, 2, 3, Ch. 123, L. 1974; R.C.M. 1947, 82-1938, 82-1939, 82-1940.

Part 2

Surplus Property Procurement

18-5-201. Administration of the state agency for surplus property. There is hereby created and established a Montana state agency for surplus property, which shall be administered by the department of administration. The director of the department may prescribe the duties of such personnel as are needed to carry out the duties as hereinafter stated.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101.

Cross-References
State agency for surplus property, 2-15-1011.

18-5-202. Authority and duties of the state agency for surplus property. (1) The state agency for surplus property is hereby authorized and empowered to:

(a) acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act", such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by the act;

(b) warehouse such property; and

(c) distribute such property within the state to eligible participants.

(2) The state agency for surplus property is hereby authorized to receive applications from eligible participants for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act as amended.

(3) For the purpose of executing its authority under this part, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and prescribe such requirements as may be deemed necessary and take such other action as is deemed necessary and suitable in the administration of this part to assure maximum utilization by and benefit to participants within the state from property distributed under this part.

(4) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(5) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for eligible participants to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from eligible participants and to transmit to them all available information in reference to such property, and to aid and assist eligible participants in every way possible in the consummation of acquisitions or transactions hereunder.

(6) The state agency for surplus property, in the administration of this part, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act; make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require; and comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957; amd. Sec. 2, Ch. 478, L. 1977; R.C.M. 1947, 82-3102.

Cross-References

Public land trust, disposition, Art. X, sec. 11, Mont. Const.

Fish and wildlife — state-federal relationships, Title 87, ch. 1, part 7.

18-5-203. Agency for surplus property — authorization for financing. The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in an internal service fund.

History: En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963; amd. Sec. 1, Ch. 389, L. 1977; amd. Sec. 3, Ch. 478, L. 1977; R.C.M. 1947, 82-3104; amd. Sec. 3, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "internal service fund" for "revolving fund".

Cross-References

Fund structure, 17-2-102.

18-5-204. Department director — delegating powers. The director of the department may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this part.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965; amd. Sec. 4, Ch. 478, L. 1977; R.C.M. 1947, 82-3105.

Cross-References

Bonds of state officers and employees, Title 2, ch. 9, part 6.

18-5-205. Officers or employees authorized to secure transfer of surplus property. Any provision of law to the contrary notwithstanding, the governing board or, in case there be none, the executive head of any state department, instrumentality, or agency or of any city, county, school district, or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this part through the department of administration under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by the department.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957; amd. Sec. 5, Ch. 478, L. 1977; R.C.M. 1947, 82-3106.

Part 3

Small Business Preferences

Part Cross-References

Public contracts — preferences, Title 18, ch. 1, part 1.

18-5-301. Short title. This part shall be known and may be cited as the "Montana Small Business Purchasing Act".

History: En. 82-1929 by Sec. 1, Ch. 204, L. 1974; R.C.M. 1947, 82-1929.

18-5-302. Statement of purpose and policy. It is the purpose of this part and is hereby declared to be the policy of this state that, whereas the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business concerns and to the opportunity for small businesses to have free entry into business, to grow, and to expand, the state shall insure that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns.

History: En. 82-1930 by Sec. 2, Ch. 204, L. 1974; R.C.M. 1947, 82-1930.

Cross-References

Printing Supreme Court decisions, 3-2-603.

Unfair competition in purchasing, 30-14-208.

18-5-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means any department, division, or agency of the state of Montana.

(2) "Small business" means a business which is independently owned and operated and which is not dominant in its field of operation. The department of administration shall establish a detailed definition by rule using, in addition to the foregoing criteria, other criteria. Small business shall further mean all business domiciled in the state of Montana or one that employs more than 50% of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department.

History: **En. 82-1931 by Sec. 3, Ch. 204, L. 1974; R.C.M. 1947, 82-1931.**

Cross-References

Business corporations, Title 35, ch. 1.

18-5-304. Designation of small business set-asides. (1) Each department has authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, and pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act. Such a designation shall be made prior to the advertisement for bids in a daily state newspaper, and when the advertisement is published, it shall indicate the purchases which have been designated small business set-asides. To effectuate the purposes of this part, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three small businesses capable of furnishing the desired property or service at a fair and reasonable price.

(2) In the case of purchase designated as small business set-asides, invitations to bid shall be confined to small businesses, and bids from other businesses shall be rejected. The purchase, contract, or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses (considering conformity with specifications and terms) in accordance with the rules for purchasing published by the department.

History: **En. 82-1932 by Sec. 4, Ch. 204, L. 1974; amd. Sec. 7, Ch. 97, L. 1977; R.C.M. 1947, 82-1932.**

Cross-References

Purchases exempt from general requirements, 18-4-133.

Professions and occupations, Title 37.

18-5-305. Insufficient bids — withdrawal — reissue. (1) If the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three or if a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside.

(2) If a department withdraws the designation of small business set-aside, it shall notify the bidders of the reason why the bids were rejected.

Invitations to bid containing the same or rewritten specifications and terms shall then be reissued under the Montana Small Business Purchasing Act, without the designation of small business set-aside.

History: **En. 82-1933 by Sec. 5, Ch. 204, L. 1974; R.C.M. 1947, 82-1933.**

18-5-306. Successful bidder — notice and purchase order. (1) After the successful bidder has been determined, the department shall place an advertisement in a daily newspaper indicating that all bids submitted on a small business set-aside have been opened and reporting the name and address of the successful bidder.

(2) A department shall send a purchase order to the successful bidder no later than 14 days after the appearance of the advertisement announcing the successful bidder.

History: **En. 82-1934 by Sec. 6, Ch. 204, L. 1974; R.C.M. 1947, 82-1934.**

18-5-307. Preference to Montana small business. When the best bid is made by a domestic Montana small business and it is the same as another bid, preference shall be given to such Montana concern.

History: **En. 82-1935 by Sec. 7, Ch. 204, L. 1974; R.C.M. 1947, 82-1935.**

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Impartiality to be shown in letting contracts — preference to residents, 18-1-111.

Montana product preference provisions, 18-1-112.

18-5-308. Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated thereunder, as now or hereafter amended, except that in case of conflict this part governs and the provisions set forth in 18-1-102, 18-1-111, and 18-1-112 shall not apply.

History: **En. 82-1936 by Sec. 8, Ch. 204, L. 1974; R.C.M. 1947, 82-1936.**

Cross-References

Procurement generally, Title 18, ch. 4.

Part 4

Vending Facilities

18-5-401. Purpose. It is the purpose of this part, in recognition of the vocational and economic needs of blind persons, to make available to those blind persons in need of vocational opportunities space in state, federal, or other property appropriate for certain business operations and to assist those persons in the development of business operations.

History: **En. Sec. 1, Ch. 175, L. 1981.**

18-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the

visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Blind vendor" means a person certified as a blind person for the purpose of this part and who is operating a vending facility administered by the department.

(3) "Certified blind person" means a blind person whom the department has determined to be a blind person as defined in this part who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) "Department" means the department of social and rehabilitation services.

(5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) "Other property" means all real property other than state or federal property as defined in this part.

(7) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this part does not include vocational institutions or institutions of higher education.

(8) "Vending facility" means an area and equipment inclusive of vending machines on state property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property.

(9) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operated telephones.

(10) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3.

History: En. Sec. 2, Ch. 175, L. 1981.

18-5-403. Certification and eligibility of blind persons. (1) The department shall certify for the purposes of this part and the federal Randolph-Sheppard Act, as amended, those persons who are blind persons as defined in this part who the department has determined are in need of vocational opportunities and are qualified to operate vending facilities.

(2) Any person or vendor operating a vending facility under the auspices of the blind vendor program administered by the department prior to October 1, 1981, may be certified as a blind vendor for the purposes of this part.

(3) Only certified blind persons are eligible for the vocational opportunities provided in this part.

History: En. Sec. 3, Ch. 175, L. 1981.

18-5-404. Vending facilities, equipment, and supplies — available to certified blind persons. (1) The department may make available to a certified blind person a vending facility appropriate for providing that person with a business opportunity determined by the department to be suitable for that person.

(2) The department may, through the vocational rehabilitation programs it administers, provide by sale, lease, loan, or grant such equipment, stocks, and supplies as may be necessary for a blind vendor to establish or improve a vending facility business. The department shall retain a first option to repurchase any equipment it has sold to a blind vendor.

History: **En. Sec. 4, Ch. 175, L. 1981.**

18-5-405. Right to fair hearing. A blind vendor is entitled to a fair hearing for any grievance against the department.

History: **En. Sec. 8, Ch. 175, L. 1981.**

18-5-406. Health and retirement fund — services to vendors. (1) The department may manage a health and retirement fund for blind vendors.

(2) The department may set aside a reasonable percentage of the net incomes earned by blind vendors from the operation of vending facilities on state and other property administered by the department to fund the operation of vending facilities and to fund the blind vendors' health and retirement fund.

(3) The department may use all net income earned from facilities operated under the provisions of 18-5-415(2) and 18-5-416 to fund services to blind vendors and to fund the blind vendors' health and retirement fund.

History: **En. Sec. 6, Ch. 175, L. 1981.**

18-5-407 through 18-5-410 reserved.

18-5-411. Administration of vending facilities — state properties. (1) The department of administration or any other department of state government that administers state property subject to this part shall transfer to the department the management and control of any vending facility that the department has determined is an appropriate facility for the purposes of this part and that the department has determined is needed for the purposes of this part.

(2) A lease or contract for the operation of a vending facility entered into prior to October 1, 1981, is not subject to this part while the lease or contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on October 1, 1981, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on October 1, 1981, who but for this part could reasonably be expected to renew his contract for the vending facility, would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract for the vending facility for a period not to exceed 4 years.

(3) The department of administration or any other department of state government that administers state property subject to this part shall give

reasonable notice to the department of the expiration or termination of any lease or contract in effect for a vending facility.

(4) Upon receipt of the notice, the department shall give reasonable notice to the department of administration or other department of state government that sent the notice required in subsection (3) stating that the department has determined that the vending facility is either appropriate and needed for the purposes of this part or that it is not.

(5) A state agency administering state property shall consult with the department when planning for a new state building, planning for remodeling of or addition to an existing state building, or negotiating the lease of a building for state use, to determine what vending facilities might be appropriate for the site and plan for such vending facilities.

(6) The department shall administer those vending facilities which are determined to be appropriate and necessary.

History: En. Sec. 5, Ch. 175, L. 1981.

18-5-412. Administration of vending facilities on other property. The department may enter into agreements with private parties or governmental entities not otherwise coming under the provisions of this part owning or controlling other property for the establishment and administration of blind vendor operations.

History: En. Sec. 9, Ch. 175, L. 1981.

18-5-413. Implementation of Randolph-Sheppard Act, as amended. (1) The department may enter into agreements with the federal government as provided for in the Randolph-Sheppard Act, as amended, for administering the Randolph-Sheppard Act for all state or federal purposes.

(2) The department may adopt rules to implement agreements with the federal government entered into under the Randolph-Sheppard Act, as amended.

History: En. Sec. 10, Ch. 175, L. 1981.

18-5-414. Authority to adopt rules. The department may adopt such rules as are necessary to effectuate this part.

History: En. Sec. 11, Ch. 175, L. 1981.

18-5-415. Operation of facilities. (1) The department is not subject to any requirements for competitive bidding on state leases or services to the state on vending facilities that are to be made available to certified blind persons or when purchasing initial supplies for the purpose of assisting a blind vendor.

(2) The department may temporarily operate a vending facility administered by the department if there is no certified blind person qualified to operate that facility.

(3) Neither a blind vendor nor the department is required to pay for rent, utilities, janitorial services in accessible public areas, or building maintenance costs for the space occupied by a vending facility on state property. The department may charge a use fee in lieu of rental, on a basis to be determined by the department, in the case of any blind vendor operating a vending facility on state property whose net income for at least 10 of the

preceding 12 months has exceeded twice the poverty level income for a nonfarm family of four as determined by the federal government.

(4) The department may purchase, sell, lease, maintain, and manage as necessary the equipment, stocks, and supplies required for the operation of those vending facilities administered as provided for in this part.

(5) The department shall, by rule, provide for appropriate allocation between the department and the blind vendors of liability for the operation of vending facilities operated pursuant to this part.

(6) After consultation with departments that are served by vending facilities subject to this part, the department may take action as necessary to assure the quality of services being provided by blind vendors.

History: **En. Secs. 5, 7, Ch. 175, L. 1981.**

18-5-416. Vending machines. The department may, except on state property, directly or through contractual arrangements, operate a facility consisting solely of vending machines if it has determined that operation by a blind vendor would be inappropriate. The department shall not directly operate vending machines on any state property where the department does not directly operate vending machines on October 1, 1981, unless, after competitive bid, the department is unable to obtain a suitable private contractor to operate vending machines on the state property. The department shall not, except through competitive bid, authorize a blind vendor to operate on state property a vending facility which consists solely or primarily of vending machines and which does not require the active presence of a vendor during its hours of operation.

History: **En. Sec. 5, Ch. 175, L. 1981.**

CHAPTER 6

SALES

Part 1 — Sale of State Property

Section

18-6-101. Power to sell state property — proceeds credited to general fund.
18-6-102. Interagency transfers.
18-6-103. Highway equipment by bid.

Chapter Cross-References

Contract for sale, Title 30, ch. 11, part 1.

Seller's rights and obligations, Title 30, ch. 11, part 2.

Part 1

Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund. (1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or internal service fund or designated subfund account.

History: **En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part); amd. Sec. 4, Ch. 58, L. 1979; amd. Sec. 1, Ch. 346, L. 1981; amd. Sec. 3, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: In (3), substituted "enterprise or internal service fund" for "revolving fund" in two places.

1981 Amendment: Added subsection (3).

Cross-References

Rights to property, 2-15-132.

Inventory — property to be charged to receiving agency, 2-17-202.

Fund structure, 17-2-102.

18-6-102. Interagency transfers. If a state institution or agency needs and requests the materials, etc., to be disposed of, that institution or agency, upon the approval of the governor, may receive the materials, etc., requested.

History: **En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part).**

Cross-References

Rights to property, 2-15-132.

Inventory — property to be charged to receiving agency, 2-17-202.

Authority of Division of Motor Vehicles to dispose of equipment, 44-1-106.

18-6-103. Highway equipment by bid. All sales of highway equipment shall be by public auction or sealed bids, and all proceeds received by the department from the sale of all material, supplies, equipment, and all other personal property of the department of highways shall be placed in the highway account of the state special revenue fund or in the appropriate enterprise or internal service fund account.

History: **En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(2); amd. Sec. 1, Ch. 35, L. 1981; amd. Secs. 1, 3, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: Sec. 1, Ch. 277 substituted "state special revenue fund" for "earmarked revenue fund".

Sec. 3, Ch. 277 substituted "enterprise or internal service fund account" for "revolving fund account".

1981 Amendment: Added "or in the appropriate revolving fund account" at the end of the section.

Cross-References

Rights to property, 2-15-132.

Inventory — property to be charged to receiving agency, 2-17-202.

Highway Department, sale of personal property and printed matter, 60-4-206.

CHAPTER 7

PRINTING AND LEGAL NOTICES

Part 1 — State Printing

Section

18-7-101. Power to contract for printing.
18-7-102. Repealed.

18-7-103. Repealed.
18-7-104. Union label.
18-7-105. Penalty.
18-7-106. Approval of purchase orders.
18-7-107. State printing, binding, and stationery work — resident preference.
18-7-108 through 18-7-110 reserved.
18-7-111. Repealed.
18-7-112. Repealed.
18-7-113. Repealed.

Part 2 — Publication of Legal Notices

18-7-201. Requirements for choice of newspaper — price.
18-7-202. Lower rates permissible.
18-7-203. Folio measurement.
18-7-204. Affidavit of printer — allowance of claims.
18-7-205. Penalty for false affidavit or overcharge.

Part 3 — Control of State Printing

18-7-301. Short title.
18-7-302. Definitions.
18-7-303. Duties of committee.
18-7-304. Department to prepare standards.
18-7-305. Printed matter prohibitions.
18-7-306. Public disclosure of costs.
18-7-307. Estimation of costs.

Chapter Cross-References

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Part 1

State Printing

Part Cross-References

Printing defined, 1-1-203.

Publication of MCA, 1-11-301.

Printing of Supreme Court decisions, 3-2-603.

Printing of House and Senate Journals and Session Laws, 5-11-202.

18-7-101. Power to contract for printing. (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained, and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(4) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all

laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

History: En. Sec. 6, Ch. 66, L. 1923; re-en. Sec. 293.6, R.C.M. 1935; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969; amd. Sec. 71, Ch. 326, L. 1974; R.C.M. 1947, 82-1916; amd. Sec. 5, Ch. 58, L. 1979; amd. Sec. 1, Ch. 265, L. 1979.

Cross-References

Printing defined, 1-1-203.

Publication of MCA, 1-11-301.

Publication and arrangement of Administrative Rules of Montana, 2-4-311.

Publishing policy committee, 2-15-1017.

Board of County Printing — composition — allocation — compensation, 2-15-1811.

Printing of Supreme Court decisions, 3-2-603.

Printing of House and Senate Journals and Session Laws, 5-11-202.

State library, Title 22, ch. 1, part 2.

18-7-102. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, Ch. 153, L. 1935; re-en. Sec. 283.1, R.C.M. 1935; R.C.M. 1947, 82-1157; amd. Sec. 6, Ch. 58, L. 1979; amd. Sec. 2, Ch. 265, L. 1979.

18-7-103. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 3, Ch. 265, L. 1979.

18-7-104. Union label. All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this section, 18-7-107, or chapter 4 of this title.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this section, 18-7-107, or chapter 4 of this title, but nothing in these provisions shall be construed as exempting such bidders from any provisions of this section, 18-7-107, or chapter 4 of this title, and such bidders shall also be required to conform to all provisions thereof.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 48, Ch. 519, L. 1983.

Compiler's Comments

1983 Amendment: In (2) and (3), deleted "18-7-103" and inserted "18-7-107, or chapter 4 of this title".

Cross-References

Wages and wage protection, Title 39, ch. 3.

General limitations on collective bargaining rights, Title 39, ch. 33.

18-7-105. Penalty. Any officer of the state who shall accept any printed matter for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in chapter 4 of this title, 18-7-104, or 18-7-107 shall be subject to a fine of $50 for each and every offense.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 255, Rev. C. 1907; re-en. Sec. 261, R.C.M. 1921; re-en. Sec. 261, R.C.M. 1935; amd. Sec. 2, Ch. 242, L. 1963; R.C.M. 1947, 82-1138; amd. Sec. 49, Ch. 519, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of section, after "any printed matter" deleted "except certificates named in 18-7-103"; and after "as set forth in" deleted "18-7-103" and inserted "chapter 4 of this title" and after "18-7-104" inserted "or 18-7-107".

Cross-References

Classification of offenses, 45-1-201.

18-7-106. Approval of purchase orders. The department may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) a purchase order has been prepared and approved by the department prior to ordering the printing; or

(2) written approval has been given by the department to order the printing without preparation of a purchase order.

History: En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R.C.M. 1921; re-en. Sec. 293, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1969; Sec. 82-1910, R.C.M. 1947; amd. and redes. 82-1916.1 by Sec. 65, Ch. 326, L. 1974; R.C.M. 1947, 82-1916.1.

Cross-References

Reappropriation of encumbered obligations at end of each fiscal year, 17-7-303.

Expenditure procedures — quarterly allotment system, 17-8-102.

18-7-107. State printing, binding, and stationery work — resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102.

History: En. Sec. 46, Ch. 519, L. 1983.

Cross-References

The state's printing, 18-4-221.

18-7-108 through 18-7-110 reserved.

18-7-111. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, Ch. 178, L. 1921; re-en. Sec. 281, R.C.M. 1921; re-en. Sec. 281, R.C.M. 1935; R.C.M. 1947, 82-1154.

18-7-112. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 2, Ch. 178, L. 1921; re-en. Sec. 282, R.C.M. 1921; re-en. Sec. 282, R.C.M. 1935; R.C.M. 1947, 82-1155.

18-7-113. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 3, Ch. 178, L. 1921; re-en. Sec. 283, R.C.M. 1921; re-en. Sec. 283, R.C.M. 1935; R.C.M. 1947, 82-1156.

Part 2

Publication of Legal Notices

Part Cross-References

County printing, Title 7, ch. 5, part 24.

18-7-201. Requirements for choice of newspaper — price. (1) In all cases and instances where any publication is required by law or is duly authorized to be made, executed, or accomplished by, for, or on behalf of the state of Montana or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof or any of the officers, agents, or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana and of general bona fide and paid circulation with second-class mailing privilege and having been printed and published continuously in the state of Montana for at least 12 months immediately preceding such publication.

(2) The price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

History: En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R.C.M. 1921; re-en. Sec. 276, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973; R.C.M. 1947, 82-1149.

Cross-References

Publication of audits, 2-7-521.

Publication of notice to be once a week, 25-3-502, 25-3-503.

Effect of service by publication upon unknown persons, 25-3-505.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

18-7-202. Lower rates permissible. The prices, rates, and standards herein fixed and prescribed are in each instance and for every case covered by this part the maximum prices, rates, and standards. Their prescription and establishment herein shall in no case be taken as prohibiting a lesser or lower rate or price than herein fixed. Every department, institution, officer, or agent of the state shall, whenever possible, obtain a lower rate or price than is fixed herein, the equivalent of the minimum rate mentioned in 18-7-204.

History: En. Sec. 3, Ch. 157, L. 1921; re-en. Sec. 278, R.C.M. 1921; re-en. Sec. 278, R.C.M. 1935; R.C.M. 1947, 82-1151.

18-7-203. Folio measurement. (1) The following is the basis of measurement for the computation of folios in the various sizes of type, when set in a column 13 ems pica wide, and constitutes a folio within the meaning of this part:

(a) 12 lines of 6-point type;
(b) 14 lines of 7-point type;
(c) 16 lines of 8-point type;
(d) 18 lines of 9-point type; or
(e) 20 lines of 10-point type.

(2) A carefully verified actual count shall be made of the folio.

History: En. Sec. 2, Ch. 157, L. 1921; re-en. Sec. 277, R.C.M. 1921; re-en. Sec. 277, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1977; R.C.M. 1947, 82-1150.

Cross-References
Folio defined, 1-1-203.

18-7-204. Affidavit of printer — allowance of claims. No claim against the state for legal advertising or any of the publications covered by this part shall be allowed unless there is attached to said claim the certification of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. It is hereby declared to be unlawful to make any claim against or to charge or attempt to charge the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921; re-en. Sec. 279, R.C.M. 1921; re-en. Sec. 279, R.C.M. 1935; amd. Sec. 9, Ch. 97, L. 1961; R.C.M. 1947, 82-1152.

Cross-References
Affidavit of printer or publisher as evidence of publication, 26-1-1011.
Affidavit of publication — where filed, prima facie evidence, 26-1-1012.

18-7-205. Penalty for false affidavit or overcharge. Any person or any corporation or any firm or any quasi-corporation who shall violate any provision of this part or swear falsely hereunder or charge or attempt to charge the state of Montana in excess of the prices and rates herein fixed or in any manner circumvent or attempt to circumvent this part or aid or abet any other person, firm, corporation, or quasi-corporation in offense against this part shall be guilty of a misdemeanor and shall on conviction for the first offense be fined not more than $100 or be imprisoned in the county jail for not more than 3 months or both such fine and imprisonment, in the discretion of the court, and shall on conviction for each subsequent offense be fined not more than $300 or be imprisoned in the county jail for not more than 6 months or both such fine and imprisonment in the discretion of the court.

History: En. Sec, 5, Ch. 157, L. 1921; re-en. Sec. 280, R.C.M. 1921; re-en. Sec. 280, R.C.M. 1935; R.C.M. 1947, 82-1153.

Cross-References
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
False swearing, 45-7-202.

Part 3

Control of State Printing

Part Cross-References
Publishing policy committee, 2-15-1017.

18-7-301. Short title. This part may be cited as the "State Printing Control Act".

History: En. Sec. 1, Ch. 646, L. 1979.

18-7-302. Definitions. As used in this part, the following definitions apply:

(1) The term "public document" includes any publication of a state agency meant for dissemination to the public, but does not include educational materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the attorney general, opinions of the supreme court, session laws, the administrative rules of Montana, Montana code annotated, regular periodical publications sold to the general public solely through subscription and newstand sale, or a publication specifically exempted by the publishing policy committee when inclusion of that publication under this part is not considered in the best interests of the state.

(2) The term "agency" as used herein includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(3) The term "department" as used herein means the department of administration provided for in Title 2, chapter 15, part 10.

(4) The term "committee" means the publishing policy committee created in 2-15-1017.

History: **En. Sec. 2, Ch. 646, L. 1979.**

18-7-303. Duties of committee. The committee shall:

(1) adopt standards for the efficient and economical publication of public documents;

(2) review proposals for publishing of all public documents prior to publication to determine:

(a) that the publication is necessary; and

(b) that the publication meets the standards of efficient and economical publication; and

(3) prepare a report for submission to each legislature detailing the savings to state government resulting from this part.

History: **En. Sec. 3, Ch. 646, L. 1979.**

18-7-304. Department to prepare standards. The department may prepare recommended standards for state printing of public documents.

History: **En. Sec. 4, Ch. 646, L. 1979.**

18-7-305. Printed matter prohibitions. No agency of state government may use public funds to print or cause to be printed any public document except with approval of the committee.

History: **En. Sec. 5, Ch. 646, L. 1979.**

Cross-References

Power to contract for printing, 18-7-101.

18-7-306. Public disclosure of costs. All public documents caused to be printed by any agency of state government shall contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of $... per copy, for a total cost of $..., which includes $... for printing and $... for distribution." This statement shall be printed in the same size type as the body copy of the document and shall be set in a box composed of a 1-point rule. If the committee determines that the cost of publication cannot be reasonably estimated at the time of publication, the publications shall contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication can be obtained by writing department of administration, Helena, Montana.

History: **En. Sec. 6, Ch. 646, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

18-7-307. Estimation of costs. The following factors shall be utilized in estimating cost data:

(1) printing, including all expenditures for production, whether on bid or in-house; and

(2) circulation, including all expenditures for postage and for salaries of agency or department personnel involved in distribution of the public document.

History: **En. Sec. 7, Ch. 646, L. 1979.**

CHAPTER 8

PROCUREMENT OF SERVICES

Part 1 — Consultants

Section
18-8-101. Purpose.
18-8-102. Definitions.
18-8-103. Exemptions.
18-8-104. Use and selection of private consultants.
18-8-105. Solicitation of bids.
18-8-106. Restriction on former employees.
18-8-107 through 18-8-110 reserved.
18-8-111. Information relating to consultant studies.
18-8-112. Contract in violation void.

Part 1

Consultants

18-8-101. Purpose. (1) It is the intent of the legislature that this part be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by this part and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) This part is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This part is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private

consultant at a reasonable fee, after the procedures set forth in this part have been followed.

History: En. Sec. 1, Ch. 547, L. 1981.

18-8-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. However, the term is limited to professional consulting service work provided to an agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

(a) that are appropriated by the legislature;

(b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services other than a state agency or employee.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education.

History: En. Sec. 2, Ch. 547, L. 1981.

18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health-care providers; and

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor.

History: En. Sec. 3, Ch. 547, L. 1981; amd. Sec. 1, Ch. 215, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "architects" deleted "concerned with the study, design, or construction of state facilities or highways".

18-8-104. Use and selection of private consultants. (1) A state agency may use a private consultant only if:

(a) there is a substantial need for the consulting services; and

(b) the state agency cannot adequately perform the consulting services with its own personnel.

(2) In selecting a private consultant, a state agency shall:

(a) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(b) when other considerations are equal, give a preference to a private consultant who is a bona fide resident of Montana as defined in 18-2-401 and whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

History: En. Sec. 4, Ch. 547, L. 1981.

18-8-105. Solicitation of bids. (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed $5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations.

History: En. Sec. 6, Ch. 547, L. 1981; amd. Sec. 1, Ch. 509, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence in (1), following "central office" deleted "or in another appropriate division or unit of the state agency".

18-8-106. Restriction on former employees. A principal or officer of a consulting firm or an individual who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the 2 years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency and the date of termination of the employment.

History: En. Sec. 7, Ch. 547, L. 1981.

18-8-107 through 18-8-110 reserved.

18-8-111. Information relating to consultant studies. (1) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the legislative fiscal analyst and the office of budget and program planning with a brief resume of the results accomplished by the private consultant.

(2) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the central office of the state agency or repository designated by the state agency.

(3) As part of the biennial budgetary hearing process conducted by the legislative fiscal analyst and the office of budget and program planning, a state agency shall upon request supply the legislative fiscal analyst and the office of budget and program planning with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

History: En. Sec. 5, Ch. 547, L. 1981.

18-8-112. Contract in violation void. (1) If a state agency contracts to use a private consultant without complying with the requirements of 18-8-105 or if a person contracts to perform a consulting service for a state agency without complying with the requirements of 18-8-106, the contract is void.

(2) If a contract is void under this section, the state or state agency may not make any payments under the contract from any state or federal funds held in or outside the state treasury if violation of this part was caused by the consultant.

(3) If a contract is void under this section because of a violation of this part by the state agency, the state shall pay the consultant for all work performed up to the date that the consultant is informed in writing of the violation by the state agency.

History: En. Sec. 8, Ch. 547, L. 1981.

CHAPTERS 9 AND 10

RESERVED

CHAPTER 11

STATE-TRIBAL COOPERATIVE AGREEMENTS

Part 1 — General Provisions

Section

18-11-101. Short title.
18-11-102. Definitions.
18-11-103. Authorization to enter agreement — general contents.
18-11-104. Detailed contents of agreement.
18-11-105. Submission of agreement to attorney general.
18-11-106. Agreements by state agencies — requirements.
18-11-107. Filing of agreement.
18-11-108. Revocation of agreement.
18-11-109. Authorization to appropriate funds for purpose of agreement.
18-11-110. Specific limitations on agreements.
18-11-111. Validity of existing agreements.

Chapter Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

Part 1

General Provisions

18-11-101. Short title. This chapter shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".

History: En. Sec. 1, Ch. 309, L. 1981.

18-11-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

History: En. Sec. 2, Ch. 309, L. 1981.

18-11-103. Authorization to enter agreement — general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments entering into the contract is authorized by law to perform. The agreement shall be authorized and approved by the governing body of each party to the agreement.

(2) The agreement shall set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

History: En. Sec. 3, Ch. 309, L. 1981.

18-11-104. Detailed contents of agreement. The agreement authorized by 18-11-103 shall specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) when an agreement involves law enforcement:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement; and

(9) any other necessary and proper matters.

History: **En. Sec. 4, Ch. 309, L. 1981.**

18-11-105. Submission of agreement to attorney general. (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

History: **En. Sec. 5, Ch. 309, L. 1981.**

18-11-106. Agreements by state agencies — requirements. As a condition precedent to an agreement made under this chapter by a state agency becoming effective, it must have, in addition to the approval of the attorney general under 18-11-105, the approval of the governor. The criteria and time for the governor's approval shall be the same as that for the attorney general's approval as provided in 18-11-105.

History: **En. Sec. 6, Ch. 309, L. 1981.**

18-11-107. Filing of agreement. Within 10 days after approval by the attorney general and prior to commencement of its performance, an agreement made pursuant to this chapter must be filed with:

(1) the secretary of the United States department of the interior;

(2) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located;

(3) the secretary of state; and

(4) the affected tribal government.

History: **En. Sec. 7, Ch. 309, L. 1981.**

18-11-108. Revocation of agreement. An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

History: **En. Sec. 8, Ch. 309, L. 1981.**

18-11-109. Authorization to appropriate funds for purpose of agreement. Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

History: **En. Sec. 9, Ch. 309, L. 1981.**

18-11-110. Specific limitations on agreements. Nothing in this chapter may be construed to authorize an agreement that:

(1) enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either the state of Montana or tribal governments located in Montana;

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country;

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws; or

(4) provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

History: **En. Sec. 10, Ch. 309, L. 1981.**

18-11-111. Validity of existing agreements. (1) Except as provided in subsection (2), this chapter does not affect the validity of any agreement entered into between a tribe and a public agency prior to July 1, 1981.

(2) However, any such agreement must satisfy the requirements of this chapter no later than July 1, 1983.

History: **En. Sec. 11, Ch. 309, L. 1981.**

TITLE 19

PUBLIC RETIREMENT SYSTEMS

Ch.
1. Social Security.
2. Deferred Compensation.
3. Public Employees' Retirement System.
4. Teachers' Retirement.
5. Judges' Retirement.
6. Highway Patrol Retirement.
7. Sheriffs' Retirement.
8. Game Wardens' Retirement.
9. Police Retirement — Statewide Plan.
10. Police Retirement — Local Funds.
11. Firefighters' Retirement.
12. Volunteer Firefighters' Compensation Act.
13. Firefighters' Unified Retirement System.

CHAPTER 1

SOCIAL SECURITY

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19-1-826. Changes in federal law.

Chapter Cross-References

Department of Social and Rehabilitation Services authorized to supplement social security, 53-2-204.

Department of Social and Rehabilitation Services' administration of vendor payment program of medical assistance under social security, Title 53, ch. 6, part 1.

Part 1

General Provisions

19-1-101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision thereof.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision thereof for such employer, except:

(i) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service which under the Social Security Act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954 and as such codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if the instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.

(5) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare; includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any such function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social

Security Act", including regulations and requirements issued pursuant thereto, as such act has been and may from time to time be amended.

(7) The term "state agency" means the public employees' retirement board of the public employees' retirement system of the state of Montana.

(8) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102.

Cross-References

Public Employees' Retirement Board, 2-15-1009.

Local Government, Title 7.

Wages defined, 39-3-201.

19-1-103. Exclusions. This chapter shall not apply to and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.

History: En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108.

Cross-References

Local government — fire protection, Title 7, ch. 33.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' unified retirement, Title 19, ch. 13.

19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

(2) Pursuant to section 218(p)(1) of the Social Security Act, the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system, the highway patrolmen's retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered thereby.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979; amd. Sec. 1, Ch. 264, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system" after "Social Security Act" in (2).

Cross-References

Retirement system to be considered separate for each institution, 19-1-821.

Public Employees' Retirement System, Title 19, ch. 3.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Part 2

Administration

19-1-201. State agency to make rules. The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

History: En. Sec. 7, Ch. 44, L. 1953; amd. and redes. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public Employees' Retirement Board, 2-15-1009.

"State agency" defined, 19-1-102.

19-1-202. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the retirement division pension trust fund. So much of the costs as are not defrayed by interest and income earned upon the contribution account, which has been credited to the retirement division pension trust fund, as provided in 19-1-602, shall be paid to the state agency for deposit to the retirement division pension trust fund by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106; amd. Sec. 1, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "retirement division pension trust fund" for "earmarked revenue fund, retirement division account" in three places.

Cross-References

Fund structure, 17-2-102.

Part 3

Referendum and Certification

Part Cross-References

Initiative and referendum, Art. XI, sec. 8, Mont. Const.

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

Resolutions and county initiative and referendum, Title 7, ch. 5, part 22.

Ordinances, resolutions, and municipal initiative and referendum, Title 7, ch. 5, part 42.

19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrolmen's, judges', and game wardens' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, he shall authorize a referendum upon the request of the governing body of the subdivision.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2); amd. Sec. 2, Ch. 264, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "members of the public employees', highway patrolmen's, judges', and game wardens' retirement systems" for "employees of the state other than highway patrolmen and with respect to highway patrolmen".

Cross-References

Initiative and referendum, Art. XI, sec. 8, Mont. Const.

Local government — initiative and referendum, Title 7, ch. 5, part 1.

Referendum by school district, 19-1-811.

Referendum — institution of higher education, 19-1-822.

PERS — membership, 19-3-401.

Judges' retirement — membership, 19-5-301.

Highway patrol retirement — membership, 19-6-301.

Game wardens' retirement — membership, 19-8-301.

19-1-302. Conduct of referendum. In either case, the referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3).

Cross-References

Local government — referendum — submission of questions to electors, 7-5-136.

19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum considers necessary and sufficient, informing the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4).

Cross-References

Local government — procedure to exercise right of initiative or referendum, 7-5-132.

19-1-304. Certification by governor. Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5).

Cross-References

Teachers' retirement — certification by Governor, 19-1-823.

Part 4

Federal-State Agreement

Part Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

19-1-401. Authority for federal-state agreement. The state agency, with the approval of the governor, is hereby authorized to enter, on behalf of the state, into an agreement with the secretary of health, education, and welfare, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in 19-1-102.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part).

Cross-References

Declaration of policy, 19-1-101.

19-1-402. Contents of federal-state agreement. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages, as defined in 19-1-102, equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that such effective date may be made retroactive to the extent permitted by section 218(f) of the Social Security Act, as defined herein;

(4) all services which constitute employment as defined in 19-1-102 and are performed in the employ of the state by employees of the state shall be covered by the agreement; and

(5) all services which constitute employment as defined in 19-1-102, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under part 5 shall be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part).

Cross-References

Declaration of policy, 19-1-101.

Part 5

Plans for Employees of Political Subdivisions

Part Cross-References
Local Government, Title 7.

19-1-501. Submission of plan. Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

Cross-References
Retirement systems to be considered separate, 19-1-104.

19-1-502. Approval of plan by state agency. (1) A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) The state agency may not finally refuse to approve a plan submitted by a political subdivision under 19-1-501 and may not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

Cross-References
Due process of law, Art. II, sec. 17, Mont. Const.
Rules — notice, hearing, and submission of views, 2-4-302.
Contested cases — notice, 2-4-601.
Contested cases — hearing, 2-4-612.
State agency to make rules, 19-1-201.

19-1-503. Required provisions of plan. No plan may be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services which constitute employment as defined in 19-1-102 and are performed in the employ of the political subdivisions by employees thereof will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from

time to time require and will comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2).

Cross-References

Local government not to affect retirement rights established by state law — may establish additional rights, 7-1-111.

Part 6

Contribution Account

Part Cross-References

State finance — accounting, Title 17, ch. 2.

19-1-601. Establishment of contribution account. There is hereby established, in place of the fund known as the contribution fund, an agency account for the social security program in the agency fund to be known as the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

Cross-References

Fund structure — agency fund, 17-2-102.

19-1-602. Management of account. (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the funds of the state agency, to be used by it to defray the costs of administering the state agency as it may determine.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "earmarked revenue fund or" after "19-1-603 to the" in (3); deleted "either" after "used by it" in (3); deleted "or for distribution pro rata to the contributing state departments, political subdivisions, school districts, and instrumentalities" before "as it may determine" at the end of (3).

Cross-References

Board of Investments — allocation — composition — quasi-judicial, 2-15-1005.

Separate investment funds, 17-6-203.

19-1-603. Limit on use of account. The contribution account shall be used and administered exclusively for the purpose of this chapter. Subject to the provisions of 19-1-602, withdrawals from the account shall be made solely for payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 19-1-401 and 19-1-402, payment of refunds provided for in 19-1-702, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

Cross-References

Separate investment funds, 17-6-203.

19-1-604. Payments from account. (1) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under 19-1-401, 19-1-402, and the Social Security Act.

(2) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this part and with such regulations as the state agency may prescribe pursuant thereto.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

Cross-References

State Treasurer — duties generally, 17-1-111.

Part 7

Payments into Contribution Account

Part Cross-References

State finance — accounting, Title 17, ch. 2.

19-1-701. Sources of funds in account. The contribution account shall consist of and there shall be deposited in such account:

(1) all contributions, interest, and penalties collected under 19-1-702 and 19-1-704 through 19-1-706;

(2) all moneys appropriated thereto by the legislature of the state of Montana;

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(4) all other moneys received for the account from any other source.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

Cross-References

State employer to include costs in budget, 19-3-803.

19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 shall be required to pay, for the period of such coverage, contributions with respect to wages (as defined in 19-1-102) equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after February 20, 1953.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or refund if adjustment is impracticable shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: **En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1.**

Cross-References

Adjusted gross income, 15-30-111.

Employer to furnish itemized statement of deductions, 39-3-101.

19-1-703. Budgeting by state departments. Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: **En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).**

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

State employer to include costs in budget, 19-3-803.

19-1-704. Contribution by political subdivision. Each political subdivision as to which a plan has been approved under part 5 of this chapter shall pay, at such time or times as the state agency may prescribe by regulation, contributions with respect to wages (as defined in 19-1-102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under 19-1-401 and 19-1-402.

History: **En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a).**

Cross-References

State agency to make rules, 19-1-201.

19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under

19-1-704 shall, in consideration of the employee's retention in or entry upon employment after February 20, 1953, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 19-1-102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and shall deduct the amount of such contributions from his wages as and when paid.

(2) Contributions so collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability therefor.

History: **En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b).**

Cross-References

Required provisions of plan, 19-1-503.

Employer to furnish itemized statement of deductions, 39-3-101.

19-1-706. Collection of delinquent payments from political subdivision. (1) The purpose of this section is to encourage compliance with the federal deposit and reporting procedures, not to produce revenue. Therefore, the state agency may waive part or all of the interest penalty when, in the opinion of the board, a reasonable explanation has been submitted in writing by the political subdivision.

(2) Delinquent payments due under 19-1-704 may, with interest at the rate of 9% a year, or $10 per day, whichever is greater, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department, agency, or fund of the state.

History: **En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5); amd. Sec. 4, Ch. 264, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (1); increased the interest rate on delinquent payments from 6% to 9% a year; inserted "or $10 per day, whichever is greater" in (2).

Cross-References

Judiciary, Courts, Title 3.

Authority to collect debt — offsets, 17-4-105.

Legal interest, 31-1-106.

Part 8

Participation of Teachers

Part Cross-References

Teachers' retirement, Title 19, ch. 4.

Education — teachers, superintendents, and principals, Title 20, ch. 4.

19-1-801. Purpose — general repeal. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this part to bring under the provisions of parts 1 through 7 of this chapter or any act amendatory thereof teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the federal Social Security Act.

History: **En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.**

Cross-References
Teachers' retirement, Title 19, ch. 4.

19-1-802. No effect on rights under other laws. Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.

Cross-References
Teachers' retirement, Title 19, ch. 4.

19-1-803 through 19-1-810 reserved.

19-1-811. Referendum by school district. A school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicates that the staff and teachers approve, then the board of trustees shall certify to the department of administration that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109.

Cross-References
Initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiative and referendum, Title 7, ch. 5, part 1.
Social security — referendum and certification, Title 19, ch. 1, part 3.
Approval of plan by state agency, 19-1-502.
School districts, Title 20, ch. 6.

19-1-812. Eligibility of staff and teachers. Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).

Cross-References
Declaration of policy, 19-1-101.

19-1-813. Collection of contributions. The fiscal officer of the district shall thereafter collect the contributions required under the federal Social Security Act, section 218, from the staff and teachers by payroll deduction and from the school district as employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2).

Cross-References

Adjusted gross income, 15-30-111.

Fund structure, 17-2-102.

Employer to furnish itemized statement of deductions, 39-3-101.

19-1-814. District's contribution to be first obligation. For the purposes of this part, the contributions with respect to services equivalent to the employer's tax established by the federal Social Security Act are the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom before any other expenditure.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).

Cross-References

Collection of delinquent payments from political subdivisions, 19-1-706.

School districts, Title 20, ch. 6.

19-1-815. Merger of reporting entities. If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the state agency shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.

History: En. Sec. 1, Ch. 350, L. 1983.

19-1-816 through 19-1-820 reserved.

19-1-821. Retirement system to be considered separate for each institution. For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).

Cross-References

Retirement systems to be considered separate, 19-1-104.

Teachers' retirement, Title 19, ch. 4.

19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2).

Cross-References

Initiative and referendum, Art. XI, sec. 8, Mont. Const.

Local government — initiative and referendum, Title 7, ch. 5, part 1.

Authorization of referendum by Governor, 19-1-301.

19-1-823. Certification by governor. If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health, education, and welfare that the conditions set forth in section 218 of the Social Security Act have been complied with in respect to the retirement system voting in the referendum.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3).

Cross-References

Certification by Governor, 19-1-304.

19-1-824. Federal-state agreement. Upon certification, the governor shall designate an official to enter into an agreement or a modification or supplement to an existing agreement or both a modification and a supplement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, to secure coverage thereunder for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4).

Cross-References

Federal-state agreement, Title 19, ch. 1, part 4.

19-1-825. Collection of contributions. (1) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations to the institution involved for salaries or other purposes.

(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6).

Cross-References

Board of Regents of Higher Education, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Adjusted gross income, 15-30-111.

Contribution by political subdivision, 19-1-704.

State employer to include costs in budget, 19-3-803.

Employer to furnish itemized statement of deduction, 39-3-101.

19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to the amended law or the superseding law.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7).

Cross-References

Subsequent amendments, 1-2-108.

Contents of federal-state agreement, 19-1-402.

CHAPTER 2

DEFERRED COMPENSATION

Part 1 — General Provisions

Section

19-2-101. Definitions.
19-2-102. Deferred compensation programs permitted — rules.
19-2-103. No effect on other retirement programs — taxes deferred.

Part 2 — Administration

19-2-201. Department authorized to make contracts with political subdivisions.
19-2-202. Administration of program.
19-2-203. Payments authorized.
19-2-204. Public entity not to be liable.
19-2-205. Repealed.
19-2-206. Functions of advisory council.

Chapter Cross-References
Wages defined, 15-30-201.
Wages, Title 39, ch. 3.

Part 1

General Provisions

19-2-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" means the department of administration created by 2-15-1001 or an appropriate officer of a political subdivision.

(2) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(3) "Deferred compensation" means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(4) "Department" means the department of administration created by 2-15-1001.

(5) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(6) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(7) "Fund" means the state deferred compensation investment account.

(8) "Participant" means an employee enrolled in the plan.

(9) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana.

History: En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704; amd. Sec. 1, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the entire section for "For the purposes of this chapter, "employee" means any person, whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision for which compensation is paid".

19-2-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of his compensation for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The amount of compensation deferred under this chapter may be used to purchase:

(a) shares in a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund shall be credited to the fund. These funds may be commingled with other state investment funds, but separate accounts must be maintained for participants in the state deferred compensation investment fund. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner; or

(d) any combination of subsections (a), (b), or (c) above, as specified by the participant. The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator.

(5) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(6) The department or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter.

History: En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701; amd. Sec. 2, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: All new language. See Sec. 1, Ch. 60, L. 1977 for prior language.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Permissible investments, 17-6-211.

Financial Institutions, Title 32.

Life insurance, Title 33, ch. 20.

Life insurance — annuity contract provisions, Title 33, ch. 20, part 3.

19-2-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state or a political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency. For purposes of this chapter any qualified private pension plans now in existence shall qualify.

History: En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706; amd. Sec. 3, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "or a political subdivision" for "county, city, town, or other political subdivision" in the middle of the section; and substituted "participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency" for "employee" at the end of the second sentence.

Cross-References

Local government not to affect retirement rights established by state law — may establish additional rights, 7-1-111.

Construction of net income, 15-30-102.

Pension trusts — restrictive rules inapplicable, 70-1-411.

Part 2

Administration

19-2-201. Department authorized to make contracts with political subdivisions. (1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the department and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the department authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the department is the administrator of the deferred compensation program and agrees to the rules and conditions established by the department for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts.

History: En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702; amd. Sec. 4, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: All new language. For prior language see Sec. 2, Ch. 60, L. 1977.

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

Contracts generally, Title 28, ch. 2 and 3.

19-2-202. Administration of program. The deferred compensation program shall be administered by the department or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-2-102. All contracts with marketing representatives must provide that all options in 19-2-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-2-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

History: En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: Completely rewritten. For prior language see Sec. 3, Ch. 264, L. 1974.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-2-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the department or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department or a political subdivision" in the first sentence for "department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to coordinate the deferred compensation program"; substituted "eligible deferred compensation plans" for "qualified plans" in the first sentence; and substituted "state or a political subdivision" for "state, city, town, or other political subdivision" at the end of the section.

Cross-References

Public funds — investments, Title 17, ch. 6, part 2.

19-2-204. Public entity not to be liable. There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

History: En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "state or a political subdivision" for "state, county, city, town, or other political subdivision"; inserted "investment" before "losses"; and inserted "eligible deferred compensation" before "plan".

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

19-2-205. Repealed. Sec. 10, Ch. 472, L. 1981.

History: En. 68-2708 by Sec. 8, Ch. 264, L. 1974; amd. Sec. 3, Ch. 60, L. 1977; R.C.M. 1947, 68-2708.

19-2-206. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or modifying deferred compensation plans.

(2) The advisory council shall meet at least quarterly to review existing deferred compensation plans and to advise the department on the administration of the program.

History: En. Sec. 6, Ch. 472, L. 1981.

Cross-References

State Employee Group Benefits Advisory Council, 2-15-1016.

CHAPTER 3

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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Part 1

General Provisions

Part Cross-References

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-3-101. Short title. This chapter may be cited as "The Public Employees' Retirement System Act".

History: En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

19-3-102. Purpose. The purpose of this chapter is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees and, to that end, providing a retirement system consisting of retirement compensation and death benefits.

History: En. 68-1501 by Sec. 2, Ch. 323, L. 1973; R.C.M. 1947, 68-1501.

19-3-103. Retirement system created. A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502.

19-3-104. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(4) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(5) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(6) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(7) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

(8) "Board" means the public employees' retirement board provided for in 2-15-1009.

(9) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(10) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(11) "Creditable service" means the aggregate of membership service and prior service.

(12) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(13) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402.

(14) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(16) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(17) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

(18) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(19) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(20) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section.

(21) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(22) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(23) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(24) "Regular interest" means interest at the rate set from time to time by the board.

(25) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(26) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(27) "Retirement fund" means the public employees' retirement system pension trust fund.

(28) "Retirement system" means the public employees' retirement system created by this chapter.

(29) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(30) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(31) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary.

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979; amd. Sec. 1, Ch. 496, L. 1981; amd. Sec. 2, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: In (27), substituted "retirement system pension trust fund" for "retirement account in the agency fund".

1981 Amendment: Deleted "additional" before "contributions" both times it appears in (1); deleted definitions of "accumulated contributions" and "accumulated normal contributions"; deleted language relating to credit for part time employment continuing for more than a year.

Commissioner Correction: Changed "subsection (11)" to "subsection (9)" in (20) to correct inadvertent omission in HB 197 (Ch. 496, L. 1981), which renumbered the subsections.

19-3-105. Exemption from taxes and legal process. The right of a person to a retirement allowance or any other benefit under this chapter and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever and shall be unassignable except as in this chapter specifically provided.

History: **En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502.**

Cross-References

Benefits tax exempt, 15-30-111.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

Firefighters' unified retirement — protection from legal process — nonassignability, 19-13-1004.

Earnings of judgment debtor, 25-13-614.

19-3-106. Budget Act superseded. This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

History: **En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508.**

Cross-References

Budget Act, Title 17, ch. 7, part 1.

Part 2

Contracts with Political Subdivisions

Part Cross-References

Contracts, Title 28, ch. 2 and 3.

19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this chapter. The contract may include any provisions which are consistent with this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract shall be subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(b) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age, or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if, in its opinion, said classification affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract shall be subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement coverage.

(b) All employees covered under the retirement system shall receive notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, not less than 20 days after the approval of the resolution by the employees, may adopt by a ⅔ majority a resolution terminating PERS coverage effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.

History: **En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701; amd. Sec. 2, Ch. 496, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "and termination" after "approval" in (2); added subsection (3) relating to termination of the contract.

Cross-References

Power of hospital district — pension benefits, 7-34-2122.

Conduct of referendum, 19-1-302.

Submission of plan, 19-1-501.

Vehicle Equipment Safety Commission — retirement benefits for employees, 61-2-205 (61-2-201, Art. III(6), Vehicle Equipment Safety Compact).

19-3-202. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least 2 years, an employee of a municipal corporation, county, or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within 30 days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in 19-3-201.

History: **En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702.**

19-3-203. Conversion of local or state retirement plan. (1) Should the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, hereafter referred to as the local system, desire to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting as provided in 19-3-201(2)(a) shall be limited to active members of the local system, and approval shall require an affirmative vote of two-thirds of such employees.

(2) All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract shall be continued and paid at their existing rates by the public employees' retirement system. The liability for such pensions shall be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system shall be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of said securities shall be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of such members in the public employees' retirement system and administered as if said contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section shall be payable by the contracting employer, with interest, on a monthly basis as specified in the contract.

History: **En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703.**

Cross-References

Declaration of policy, 19-1-101.

Employer contributions, Title 19, ch. 3, part 8.

19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per $100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer has the right to maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979.

Cross-References

Employer contributions, Title 19, ch. 3, part 8.

Firefighters' unified retirement — taxing authority of employers, 19-13-606.

Part 3

Administration of Retirement System

Part Cross-References

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — statewide plan — administration of plan, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-3-301. Location of board — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena.

(2) A quorum of the board shall be three members.

(3) The board shall elect one of its members president. The board may appoint a committee of one or more of its members which shall have authority to perform routine acts such as retirement of members and fixing of retirement allowances, approval of death claims, and correction of records necessary in the administration of the system in accordance with the provisions of this chapter and rules of the board. The attorney general shall be the legal counsel for the board.

(4) The department of administration shall appoint and fix the compensation of the administrator and other necessary employees.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Attorney General — duties generally, 2-15-501.

Department of Administration, Title 2, ch. 15, part 10.

Public Employees' Retirement Board, 2-15-1009.

19-3-302. Compensation and expenses of board members. The travel expenses of members of the board shall be as allowed in 2-18-501 through 2-18-503, as amended, and reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to travel expenses, compensation as provided in 2-15-1009.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part); amd. Sec. 2, Ch. 672, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "as provided in 2-15-1009" for "at the rate of $25 a day".

19-3-303. Repealed. Sec. 4, Ch. 254, L. 1981.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).

19-3-304. Powers and duties of board. (1) The board may establish such rules as it deems proper for the administration and operation of the retirement system and enforcement of this chapter, subject to its limitation. The board shall establish those uniform rules as are necessary to determine credit for fractional years of service.

(2) The board shall determine who are employees within the meaning of this chapter. The board shall be the sole authority under this chapter as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this chapter. All persons in similar circumstances shall be treated alike.

(3) The board shall maintain such records and accounts it determines necessary for the administration of this chapter.

(4) Upon the basis of the findings of the actuary pursuant to 19-3-305, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this chapter.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Governmental code of fair practices, Title 49, ch. 3.

19-3-305. Employment of actuary — biennial investigation and valuation. The board shall retain, on a full-time basis, a competent actuary who is a member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. Biennially he shall make an actuarial investigation into the suitability of the actuarial tables used by the system and an actuarial valuation of the assets and liabilities of the retirement system. From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804.

Cross-References

Valuations for teachers' retirement system, 19-4-203.

Valuations for police officers' retirement systems, 19-9-504, 19-10-205.

Valuations for fire department relief associations, 19-11-513.

Firefighters' unified retirement — actuarial valuation, 19-13-504.

Valuations for Board of Hail Insurance, 80-2-228.

19-3-306. Report by department of administration to governor. As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investments. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system.

History: **En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2).**

Cross-References

Department of Administration, 2-15-1001.

General fiscal duties of State Treasurer, 17-1-111.

Separate investment funds, 17-6-203.

19-3-307. Employers to give board monthly report and other information. The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer shall furnish such additional information concerning the members as the board may require in the administration of the retirement system, including such services of the employer's office and departments as the board may request in connection with claims by members for benefits under the system.

History: **En. 68-2512 by Sec. 60, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2512.**

Cross-References

Payment of contributions by state agencies — accompanying reports — penalty, 19-3-802.

Payment of contributions by contracting employer — accompanying reports — penalty, 19-3-804.

Part 4

Membership

Part Cross-References

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

19-3-401. Membership. (1) All employees shall become members on the first day of employment. Each employee shall file with the board such information affecting his status as a member of the retirement system as the board may require.

(2) Every employee who reenters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but

upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon reentry.

(3) Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this chapter.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601.

Cross-References

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Judges' retirement — membership, 19-5-301.

Highway patrol retirement — membership, 19-6-301.

Sheriffs' retirement — membership, 19-7-301.

Game wardens' retirement — membership, 19-8-301.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — active membership, 19-13-301.

19-3-402. Federally subsidized employees eligible. (1) A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of 19-3-505 and 19-3-506. **(Subsection (2) terminates July 1, 1984—sec. 1, Ch. 458, L. 1983.)**

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510; amd. Sec. 1, Ch. 458, L. 1983.

Compiler's Comments

1983 Amendment: Deleted, effective July 1, 1984, and former (2), which read: "Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of 19-3-505 and 19-3-506."

Cross-References

Home guard — pay, allowances, pensions, and benefits, 10-1-704.

19-3-403. Exclusions. The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members;

(13) full-time students employed at and attending the same public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505.

(15) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later;

(16) all former members receiving a retirement allowance other than as a beneficiary serving in employment if that employment does not exceed 60 working days in any fiscal year. These former members must be reinstated into membership on the 61st working day in any fiscal year unless they elect to return to membership prior to that day.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979; amd. Sec. 1, Ch. 60, L. 1981; amd. Sec. 1, Ch. 142, L. 1981; amd. Sec. 1, Ch. 147, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (13), substituted "full-time students employed at and attending the same" school for "students of any" school.

1981 Amendments:

Chapter 60 inserted "for 6 months or less" in (12); substituted "or the legislative council to perform work related to the legislative session" for "during the legislative session" in (12).

Chapter 142 substituted "120" for "60" working days at the beginning of (5); added the balance of (5) following "any fiscal year" near the beginning of the subsection; deleted "within 1 year" before "after becoming a member" near the end of (13); added subsection (16).

Cross-References

Workers' Compensation Judge covered by PERS, 2-15-1014.

Legislative Council, Title 5, ch. 11, part 1.

Power of hospital district to provide pension benefits, 7-34-2122.

Bureau of Criminal Investigation — personnel covered by PERS, 44-2-114.

Mental health corporations — may have PERS program, 53-21-204.

Vehicle Equipment Safety Commission — may provide retirement benefits, 61-2-205 (61-2-201, Art. III(6), Vehicle Equipment Safety Compact).

19-3-404. Refund when member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(8) and before receiving his accumulated contributions shall be paid to the beneficiary nominated by him to receive any death benefit payable under 19-3-1201.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b).

Cross-References

Designation of beneficiary, 19-3-1301.

19-3-405. Refund of employer contribution made after termination. Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(8), shall be repaid to the employer.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c).

Cross-References

Employer contributions, Title 19, ch. 3, part 8.

19-3-406. Termination of membership. If any part of a member's accumulated normal contributions is refunded pursuant to 19-3-703, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603.

Part 5

Service Credits

Part Cross-References

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Judges' retirement — membership and service credits, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-3-501. Absence not included in time of service. Except as provided in 19-3-502, 19-3-503, and 19-3-504, time during which a member is absent from compensated employment with an employer may not be allowed in computing service.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604.

Cross-References

School district employee's official vacation absence counted as service, 19-3-401.

19-3-502. Absence in military service. (1) Any period of absence from compensated employment with an employer for one of the following reasons, occurring either during a war involving the United States as a belligerent or during any other national emergency and 90 days thereafter, is considered service for the purpose of qualification for retirement and death benefits but not for calculation of retirement benefits:

(a) by reason of having been ordered on duty with the armed forces of the United States;

(b) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(c) by reason of direct assignment to the department of defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

(2) Any member so absent has the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does contribute, he shall receive credit for service for such time in the same manner as if he had not been absent from service. Whenever a member elects to continue his contributions, the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) Any member so absent loses the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 19-3-703.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605.

Cross-References

Reemployment of veteran — restoration of benefits, 10-2-213.

Reemployment of public employee upon completion of military service, 10-2-221.

Reemployment of public employee — no loss of seniority or benefits, 10-2-225.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — military service, 19-6-303.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — local funds — credit for military service, 19-10-405.

Firefighters' unified retirement — military service, 19-13-402.

19-3-503. Election to qualify military service for full credit. (1) (a) A member with 10 years or more of state service qualified under this chapter may, at any time prior to retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this same service pursuant to 19-3-502.

(b) To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his 11th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of 10 years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal service retirement benefit, he may not qualify his military service under subsection (1) of this section. However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) of this section if his active duty in the armed forces of the United States is not more than 25% of the total sum of all years of military service including reserve and active duty time.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1.

Cross-References

Home guard — pay, allowances, pensions, and benefits, 10-1-704.

Highway patrol retirement — election to qualify military service for full credit, 19-6-304.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Police retirement — local funds — election to qualify previous military service, 19-10-406.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within 1 year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for service retirement benefits under Title 19, chapter 3, part 9, or survivorship allowances under Title 19, chapter 3, part 12, but not for the calculation of such benefits unless the member complies with subsections (2) through (4) of this section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits.

(2) (a) Any member absent because of an employment-related injury which entitles him to workers' compensation payments may contribute to the retirement system, upon his return to service, an amount equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence plus interest accruing from 1 year from the date after he returns to covered employment to the date he contributes for his period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered employment, a member must file with the board a written notice of his intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions which are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis not to exceed 24 monthly payments.

(5) A member so absent loses his right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 19-3-703.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606; amd. Sec. 1, Ch. 311, L. 1983.

Compiler's Comments

1983 Amendment: In middle of (1), substituted "service retirement benefits under Title 19, chapter 3, part 9," for "retirement benefits"; inserted "under Title 19, chapter 3, part 12," after "survivorship allowances"; at end of (2)(a) inserted "plus interest accruing ... period of absence"; near beginning of (2)(b) substituted "contribute under subsection (2)(a)" for "continue his contributions"; in (2)(b) inserted last two sentences; at beginning of (3) substituted "At some time after returning to covered employment," for "within 6 months after he returns to service"; at end of (3) deleted former sentence, which read "The employer shall provide the employee with written notice of the provisions of this section which shall be signed by the employee and returned to the employer, who shall provide a copy to the board."; and made minor phraseology changes.

Cross-References

Amount of survivorship allowance, 19-3-1205.

Teachers' retirement — creditable service for employment while on leave, 19-4-403.

Workers' compensation — "injury" defined, 39-71-119.

Reinstatement to job following pregnancy-related leave of absence, 49-2-311.

19-3-505. Qualification of service with employer. (1) Subject to the provisions of this section, any person who has service with an employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board.

(2) (a) The person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been an employer and the interest which would have accumulated thereon to the time of such payment; provided that the employer may pay the employer's portion including accrued interest.

(b) The employer must establish a policy as to the retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination will be subject to the determination of the board. All successful appeals will obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing such appeal with the board. Each appeal will be heard on its individual merits and will not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board will determine the eligibility of all service credit requests as prescribed in 19-3-304.

(4) Payment may be made in one sum at the time of filing notice or on an installment basis. Installment payments shall not exceed 24 monthly payments. When the monthly payment exceeds 5% of compensation in the initial month of payment, the board may allow smaller payments over a period to exceed 24 months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter forfeit such person's right to make any further installment payments, unless permission is granted to do so by the board.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607.

Cross-References

Freedom from discrimination, 49-1-102.

Discrimination in employment, 49-2-303.

19-3-506. Qualification of prior service not previously credited. If a member otherwise has not less than 5 years of creditable service of which not less than 3 years have been as a contributing member of the retirement system, he shall be granted credit for any prior service not previously granted upon his filing written notice thereof with the board. Proper certification of the prior service must be certified by the employer and furnished by the member.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1608.

19-3-507. Repealed. Sec. 4, Ch. 290, L. 1983.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977; R.C.M. 1947, 68-2511.

19-3-508. No duplication of allowance when there is more than one period of service. There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2).

Cross-References

Teachers' retirement — no duplication of benefits when there is more than one period of service, 19-4-407.

Sheriffs' retirement — no duplication of benefits when there is more than one period of service, 19-7-307.

Game wardens' retirement — no duplication of benefits when there is more than one period of service, 19-8-305.

Firefighters' unified retirement — credited service to be cumulative, 19-13-401.

19-3-509. Qualification of service from other Montana public retirement systems. (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the highway patrolmen's, sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-3-304(2) upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: En. Sec. 1, Ch. 145, L. 1981; amd. Sec. 3, Ch. 290, L. 1983: amd. Sec. 1, Ch. 331, L. 1983.

Compiler's Comments

1983 Amendments: Both Ch. 290 and Ch. 331 deleted former (3), which read: "Service qualified under subsections (1) and (2) may not be used for qualification under 19-3-507." In addition, Ch. 331 inserted firefighters' unified retirement system in first sentence of (1)(a) and inserted (2).

Cross-References

Highway patrol retirement, Title 19, ch. 6.

Highway patrol retirement — qualification of service from other Montana public retirement systems, 19-6-305.

Sheriffs' retirement, Title 19, ch. 7.

Sheriffs' retirement — qualification of service from other Montana public retirement systems, 19-7-309.

Game wardens' retirement, Title 19, ch. 8.

Game wardens' retirement — qualification of service from other Montana public retirement systems, 19-8-306.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — statewide plan — qualification of service from other Montana public retirement systems, 19-9-405.

Police retirement — local funds, Title 19, ch. 10.

19-3-510. Service in the United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify such federal service as creditable service in the public employees' retirement system under subsection (2) of this section, provided that:

(a) the member has accrued 5 years or more of service in the public employees' retirement system; and

(b) the member returns to full-time employment with the prior state or local government employer for at least 1 year after completing service in the United States government.

(2) A member of the public employees' retirement system who is assigned to an agency of the United States government has the option to:

(a) continue his payments into the account; or

(b) qualify this service under 19-3-505 within 2 years after his return to active status as a state or local government employee.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the public employees' retirement system and may be included in the determination of final compensation as defined in 19-3-104, provided that the final compensation cannot exceed 100% of the member's highest annual compensation earned as a state or local government employee.

History: En. Sec. 1, Ch. 261, L. 1981.

19-3-511. Transfer of service credits from teachers' retirement system. (1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) earned compensation for all full-time service and part-time service as defined in 19-4-101; and

(b) the amount of the first full year's teaching salary earned in Montana after any period of creditable service not included in subsection (1)(a) multiplied by the number of years or partial years granted by the teachers' retirement system.

(2) A member may at any time before his retirement make a written election with the board to qualify in the public employees' retirement system all of his creditable service in the teachers' retirement system.

(3) The amount that must be paid to the retirement system to qualify this service under subsection (2) is the sum of the following:

(a) from the teachers' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-3-701 and 19-3-801, based on the assumed salary, less the amount paid by the employee in subsection (3)(b); and

(b) from the employee, the amount of his accumulated contributions at the time he terminated active membership, as defined in 19-4-302, plus accrued interest from the date of termination until payment is received by the retirement system based on the interest tables in use by the retirement system.

(4) The amount of creditable service granted in subsection (2) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

(5) Subject to the provisions of 19-3-304, the board is the sole authority in determining the amount of creditable service qualified under subsections (2) and (4) and the amount paid to the retirement system under subsection (3).

(6) If a member who has creditable service in the teachers' retirement system dies before he qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the public employees' retirement system. Before payment of the death benefit, the teachers' retirement board must transfer to the public employees' retirement system the employee and employer contributions necessary to qualify this service in the public employees' retirement system as provided in subsection (3)(a).

History: **En. Sec. 1, Ch. 290, L. 1983.**

Part 6

Financial Management

Part Cross-References

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund, Title 19, ch. 11, part 2.

Firefighters' unified retirement — retirement account — creation and management, Title 19, ch. 13, part 5.

19-3-601. Management of fund. The retirement fund shall be managed as follows:

(1) The board is the trustee of all moneys collected for the retirement system and has exclusive control of the administration of the fund except as otherwise provided by law.

(2) The department of administration shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is custodian of the retirement fund, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4).

Cross-References

Board of Investments, 2-15-1005.

General fiscal duties of State Treasurer, 17-1-111.

Separate investment funds, 17-6-203.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

Montana Trustees' Powers Act, Title 72, ch. 21.

19-3-602. Investment of fund. (1) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(2) Interest earned on any cash deposited in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5).

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Board of Investments, 2-15-1005.

Authority to invest funds in obligations of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

19-3-603. Restrictions on use of fund. (1) Except as herein provided, no member and no employee of the department of administration may:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their

beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: **En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7).**

Cross-References

Permissible investments, 17-6-211.

Teachers' retirement — restrictions on use of money, 19-4-502.

Judges' retirement — limit on use of fund, 19-5-405.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Police retirement — local funds — limit on use of funds, 19-10-202.

Suretyship, Title 28, ch. 11, part 4.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-3-604. Transfer of dormant savings account. The board may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of 10 years. No right of the member shall be jeopardized by such transfer, and the savings account shall be transferred to the member's name upon subsequent reentry to membership.

History: **En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907.**

Cross-References

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Judges' retirement — transfer of dormant savings account, 19-5-406.

Highway patrol retirement — transfer of dormant savings account, 19-6-407.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Game wardens' retirement — transfer of dormant accounts, 19-8-405.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

19-3-605. Transfer between funds. Any fund out of which payments are made under the provisions of this chapter may be reimbursed to the extent of such payments by transfer of a sufficient sum for the reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the department of administration the amounts to be thus transferred and the funds from and to which the transfer is to be made, and the department shall thereupon make the transfer as directed in the certificate.

History: **En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506; amd. Sec. 3, Ch. 496, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "state auditor" and "auditor" to "department of administration" and "department".

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

19-3-606. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: **En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8).**

Cross-References

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-4-504.

Judges' retirement — vesting of retirement allowances upon termination of system, 19-5-407.

Highway patrol retirement — vesting of retirement allowances upon termination of system, 19-6-408.

Sheriffs' retirement — vesting of retirement allowances upon termination of system, 19-7-408.

Game wardens' retirement — vesting of retirement allowances upon termination of system, 19-8-406.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

Part 7

Employee Contributions

Part Cross-References

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

19-3-701. Member's contribution to be deducted. The normal contribution of each member shall be equal to 6% of his compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902.

Cross-References

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — members' contributions deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

Employer to furnish itemized statement of deductions, 39-3-101.

19-3-702. Additional contributions allowed. Subject to the rules promulgated by the board, any member may elect to contribute at rates in excess of those provided for in 19-3-701 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application, shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903.

Cross-References

Board to make rules, 19-3-304.

19-3-703. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid his accumulated contributions at his request.

(2) Upon qualification for any other benefit under this chapter, a member having any accumulated contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of his accumulated contributions if after a previous discontinuance of service he withdrew all or part of his contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in 19-3-704.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the department of administration to make such direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979; amd. Sec. 4, Ch. 496, L. 1981.

Compiler's Comments

1981 Amendment: Changed "such part of his accumulated contributions, including regular interest thereon, as he requests" to "his accumulated contributions at his request" at the end of (1); and deleted from (1) provision relating to automatic payment of accumulated contributions to employees with less than 5 years of service who leave service and do not reenter for 5 years.

Cross-References

Termination of membership, 19-3-406.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Highway patrol retirement — refund of member's contribution, 19-6-403.

Sheriffs' retirement — discharge or voluntary resignation prior to eligibility for retirement, 19-7-304.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-3-704. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service. He may reinstate that membership service by redepositing the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken by such last termination.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to

termination and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906.

Cross-References

Sheriffs' retirement — reinstatement after withdrawal of contributions, 19-7-306.

Police retirement — statewide plan — redeposit of amounts withdrawn upon reinstatement, 19-9-603.

Part 8

Employer Contributions

Part Cross-References

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

19-3-801. Employer contribution rates — actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be 6.417% from July 1, 1983, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part); amd. Sec. 1, Ch. 254, L. 1981; amd. Sec. 3, Ch. 549, L. 1981; amd. Sec. 2, Ch. 663, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), substituted "these rates shall be 6.417% from July 1, 1983, and thereafter" for "these rates shall be 6.32% from July 1, 1981, and thereafter".

1981 Amendments — Coordination Section: Section 3, Ch. 254, L. 1981, provided: "If both this act and HB 45, introduced in the 47th legislature, are passed and approved, the percentage amount contained in 19-3-801 shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act." The pre-1981 employer rate was 5.90%. The increase in HB 45 (Ch. 549) was .12% and in SB 232 (Ch. 254) .30%. In accordance with the coordination section, the Code Commissioner inserted "6.32" in the last sentence of (1).

Cross-References

Employment of actuary — biennial investigation and valuation, 19-3-305.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contribution, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — employer contribution, 19-9-703.

Police retirement — local funds — city's contribution to fund, 19-10-301.

Firefighters' unified retirement — employer contribution, 19-13-605.

19-3-802. Payment of contributions by state agencies — accompanying reports — penalty. (1) No later than the 15th day of each month or 5 working days after payroll warrants have been issued for the last normal pay period of the previous month, whichever is later, the state auditor and each agency of the state which is not paid through the state central payroll system shall remit to the public employees' retirement system all contributions required of each employer and its employees under this chapter on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. These remittances shall be accompanied by such reports as the board requires.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater, from the appropriation account of the reporting agency by submission of a claim to the state treasurer. The board may, in its discretion, waive the interest penalty.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979.

Cross-References

State Treasurer — general fiscal duties, 17-1-111.

Employers to give monthly report and other information, 19-3-307.

Absence in military service, 19-3-502.

19-3-803. State employer to include costs in budget. Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2).

Cross-References

Budgeting by state departments, 19-1-703.

19-3-804. Payment of contributions by contracting employer — accompanying reports — penalty. (1) No later than the 15th day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this chapter on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the interest penalty. The collection may be made by either of the following means:

(a) by an action therefor in a court of competent jurisdiction against the employer;

(b) by deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

History: En. 68-2507 by Sec. 55, Ch. 323, L. 1973; R.C.M. 1947, 68-2507; amd. Sec. 2, Ch. 348, L. 1979.

Cross-References

Employer to give monthly report and other information, 19-3-307.

19-3-805. Administrative expenses. (1) The expense of administering this chapter, exclusive of the payments of retirement allowances and other benefits, may be paid from the fund.

(2) In addition to the contributions elsewhere provided in this chapter, on January 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. These fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981.

Compiler's Comments

1981 Amendments:

Chapter 254 substituted the language in (1) for language providing for a fee, not to exceed 0.3%, collected by the department from an employer for defraying expenses of the chapter.

Chapters 254 and 496 substituted "January" for "July" in the middle of (2).

Cross-References

Teachers' retirement — expense fund, 19-4-606.

Judges' retirement — administrative expenses, 19-5-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — administrative expenses, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Part 9

Service Retirement

Part Cross-References

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-3-901. Eligibility for service retirement. A member who has attained the age of 60 and completed 5 years of qualified service is eligible for service retirement. A member who has attained age 65 is eligible for service retirement regardless of his years of creditable service. A member who has completed 30 years or more of state service is eligible for service retirement regardless of his age.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1).

Cross-References

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters unified retirement — eligibility for service retirement, 19-13-701.

19-3-902. Eligibility for early retirement. A member who is not eligible for service retirement but has attained age 50 and completed 5 years of qualified service is eligible for early retirement. A member who has completed 25 years or more of state service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2); amd. Sec. 6, Ch. 496, L. 1981.

Compiler's Comments

1981 Amendment: Changed age for early retirement from 55 to 50 years; and added last sentence.

Cross-References

Teachers' retirement — early retirement, 19-4-802.

Sheriffs' retirement — early retirement option, 19-7-502.

Firefighters' retirement — partial service pension, 19-11-603.

19-3-903. Time of commencement of allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of 19-3-901 or 19-3-902 and filed the appropriate written application. The retirement allowance must commence on the first day of the month following the member's last day of membership service.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002; amd. Sec. 1, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: In last sentence, substituted "must" for "shall"; deleted from end of last sentence "or on the first day of the month in which his application is filed with the board, whichever is later".

Cross-References

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Police retirement — statewide plan — application for service retirement, 19-9-803.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Volunteer Firefighters' Compensation Act — procedure for claiming pension benefits, 19-12-403.

19-3-904. Amount of retirement allowance. (1) The annual amount of retirement allowance payable to a member following his service retirement is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) one-sixtieth of his final compensation multiplied by the number of years of his creditable service;

(c) any retirement allowance payable under 19-3-905.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid

the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003.

Cross-References

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-3-905. Adjustment of allowance for certain members. The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):

(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age 70 in service, the lesser of $480 or one-half of his final compensation.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004.

Compiler's Comments

Ad Hoc Cost-of-Living Increase: Section 1, Ch. 663, L. 1983, provided: "Effective July 1, 1983, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system or his beneficiary must be increased as follows:

(1) $1 for each year of creditable service, up to a maximum of $30, for a member retired before July 1, 1981; or

(2) 50 cents for each year of creditable service, up to a maximum of $15, for a member retired on or after July 1, 1981, but before January 1, 1983."

Cross-References

Police retirement — statewide plan — election to serve additional years, 19-9-802.

Police retirement — local funds — supplement to certain pensions, 19-10-506.

Firefighters' retirement — supplement to certain pensions, 19-11-606.

19-3-906. Early retirement allowance. (1) The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60 or upon completion of 30 years of creditable service pursuant to 19-3-904.

(2) The early retirement allowance shall be determined as prescribed in 19-3-904 with the exception that the allowance must be reduced as follows:

(a) by ½ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had completed 30 years of creditable service.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005; amd. Sec. 7, Ch. 496, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or upon completion of 30 years of creditable service" after "age 60" in (1); added subsection (2).

Cross-References

Teachers' retirement — early retirement, 19-4-802.

Judges' retirement — involuntary retirement allowance, 19-5-503.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Sheriffs' retirement — early retirement option, 19-7-502.

Sheriffs' retirement — involuntary retirement allowance, 19-7-504.

Game wardens' retirement — involuntary retirement allowance, 19-8-604.

Firefighters' retirement — partial service pension, 19-11-603.

Part 10

Disability Retirement

Part Cross-References

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability benefits, Title 19, ch. 13, part 8.

19-3-1001. Definition. "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

Cross-References

"Disability" defined, 19-3-104.

Workers' compensation — "permanent partial disability" — "permanent total disability" defined, 39-71-116.

19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsection (2) and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003.

The board may request any information on file with the workers' compensation division concerning the duty-related accident. If no information is available, the board may request and the division shall provide an investigative report on the disabling accident.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1); amd. Sec. 2, Ch. 311, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (1), inserted "Except as provided in subsection (2) and 19-3-1004"; and inserted (2).

Cross-References

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.

Police retirement — local funds — eligibility for disability retirement, 19-10-402.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.

19-3-1003. Determination by board. The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this part and of 19-3-1102 and 19-3-1103 and shall pay for those medical services and advice compensation the board deems reasonable.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).

Cross-References

Who may administer oaths, 1-6-101.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Police retirement — statewide plan — Board's determination of disability, 19-9-901.

Firefighters' unified retirement — Board's determination of disability, 19-13-801.

Persons before whom depositions may be taken, Rule 28, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

19-3-1004. Waiver of early retirement eligibility. A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).

Cross-References

Waiver — affirmative defenses, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

19-3-1005. Application for disability retirement allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of 19-3-1002 and duly filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within 4 full months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part).

Cross-References

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Volunteer Firefighters' Compensation Act — procedure for claiming disability benefits, 19-12-502.

19-3-1006. Time of commencement of allowance. The retirement allowance payable to a member who has become disabled shall commence on the day following the member's last day of membership service.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part).

Cross-References

Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.

Police retirement — local funds — eligibility for disability retirement, 19-10-402.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — eligibility for disability benefits, 19-13-802.

19-3-1007. Allowance for duty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded compensation by the workers' compensation division, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103.

Cross-References

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — disability — amount of retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Workers' compensation, Title 39, ch. 71.

19-3-1008. Allowance for nonduty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (i) or (ii) as follows:

(i) a pension which, together with the annuity provided under subsection (b), shall make the retirement allowance equal to 90% of one-sixtieth of his final compensation multiplied by his years of creditable service;

(ii) a retirement allowance equal to 25% of his final compensation.

(2) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104.

Cross-References

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of disability retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

Part 11

Changes in Retirement Allowances

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-3-1101. Optional retirement allowance. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this chapter, into an optional retirement allowance which is the actuarial equivalent of the regular retirement allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(c) option 4—such other actuarially equivalent benefit as may be approved by the board.

(2) Election of an optional retirement allowance must be by written application filed prior to the first payment of the regular retirement allowance.

(3) If either the member or his contingent annuitant dies before the member has received the first payment under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date his election or changed election of an optional retirement allowance is received by the board, then the election is void and the death is considered as that of a member before retirement.

History: **En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203.**

Cross-References

Judges' retirement — optional retirement allowance, 19-5-701.

Highway patrol retirement — optional retirement allowance, 19-6-701.

Sheriffs' retirement — optional retirement allowance, 19-7-701.

Game wardens' retirement — optional retirement allowance, 19-8-801.

19-3-1102. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) A person whose retirement allowance is canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) If a person whose retirement allowance is canceled is not reemployed in a position subject to the retirement system, his service is considered, for the purposes of 19-3-703, to have been discontinued coincident with the commencement of his retirement allowance.

History: **En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201.**

Cross-References

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of disability allowance, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

19-3-1103. Disability allowance reduced by earnings. (1) Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in 19-3-104, the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202; amd. Sec. 8, Ch. 496, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Cross-References

Teachers' retirement — adjustment of disability allowance, 19-4-904.

19-3-1104. Cancellation of retirement allowance upon reemployment. Any person receiving a retirement allowance who becomes an employee shall be considered reinstated from retirement, and his retirement allowance shall be canceled.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part).

Cross-References

Teachers' retirement — cancellation of allowance and restoration to membership, 19-4-905.

19-3-1105. Allowance upon a second retirement. (1) Upon retirement subsequent to a cancellation under 19-3-1104, a member shall be entitled to receive a recalculated benefit as provided in 19-3-904. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his reemployment.

(2) Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least 2 years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part).

19-3-1106. Reduction of retirement allowance upon limited reemployment. Any person receiving a service retirement allowance, not as a beneficiary, who is not eligible for membership may return to covered employment for a period not to exceed 60 working days in any fiscal year.

The retirement allowance of a retiree so employed will be reduced by $1 for each $2 earned in excess of $3,500 for each calendar year.

History: **En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2); amd. Sec. 9, Ch. 496, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "reduced by any earnings in excess of the minimum wage per month on $1 for $1 basis" to "reduced by $1 for each $2 earned in excess of $3,500 for each calendar year.

Cross-References

Teachers' retirement — adjustment of allowance, 19-4-904.

Part 12

Death Benefits

Part Cross-References

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-3-1201. Eligibility for death benefits. The board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

(1) while in service;

(2) within 4 months after the discontinuance of service but before retirement;

(3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than 4 months;

(4) while disabled, as defined in 19-3-1001, if he has been continuously so disabled from the discontinuance of his service but is not receiving a retirement allowance because of the disability.

History: **En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301.**

Cross-References

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the workers' compensation division of the state of Montana that it is paying compensation because the member's death

resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid.

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302; amd. Sec. 1, Ch. 210, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and (3)" in the first sentence; deleted "together with regular interest on the accumulated normal contributions to the date of the member's death" at the end of (1); added subsection (3).

Cross-References

Teachers' retirement — allowances for death of member, 19-4-1001.

Teachers' retirement — payments upon death of retiree, 19-4-1002.

Judges' retirement — payments upon employment-related death, 19-5-603.

Judges' retirement — payments in case of death from other causes, 19-5-604.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Highway patrol retirement — payments upon death from other causes, 19-6-604.

Sheriffs' retirement — payments in case of death after retirement, 19-7-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Game wardens' retirement — payments upon death from other causes, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — death benefits, 19-12-505.

Firefighters' unified retirement — payment of service or disability allowance upon death of member, 19-13-901.

19-3-1203. Election of optional death benefit. A member or his beneficiary after his death may elect to have the death benefit paid in an actuarially equivalent form subject to such rules as the board may adopt. Election of an optional death benefit shall be by written application.

History: En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303.

19-3-1204. Survivorship allowance elected by beneficiary. A beneficiary eligible to receive a death benefit may elect, by written application, a survivorship allowance instead, if all of the following conditions are met:

(1) The member on behalf of whom the death benefit is payable had completed 5 years of creditable service.

(2) The beneficiary is a natural person of legal age.

(3) The beneficiary elects the survivorship allowance within 90 days of receipt of notice from the board that he is eligible to receive the death benefit.

History: En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304.

Cross-References

Volunteer Firefighters' Compensation Act — pension benefits to surviving spouse or children, 19-12-405.

Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-3-1205. Amount of survivorship allowance. The annual amount of survivorship allowance payable to a member's beneficiary shall be the actuarial equivalent of either:

(1) the accrued portion of the service retirement allowance which would have been payable to the member commencing at age 60 pursuant to 19-3-904, if he had not attained age 60 at the time of his death; or

(2) if the deceased member had attained age 60 or completed 30 years of service at the time of his death, the service retirement allowance which would have been payable to the member if he had retired immediately prior to his death.

History: **En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305.**

Part 13

Beneficiaries

19-3-1301. Designation of beneficiary. The beneficiaries of a member shall be such persons as the member shall designate in the appropriate written application. A member may revoke such designation and name different beneficiaries by filing written notice with the board.

History: **En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 10, Ch. 496, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "beneficiary" to "beneficiaries" and "person" to "persons"; changed "revised written instrument" to "written notice" near the end of section.

Cross-References

Judges' retirement — nomination of beneficiary, 19-5-602.

Highway patrol retirement — nomination of beneficiary, 19-6-602.

Sheriffs' retirement — designation of beneficiary, 19-7-602.

Game wardens' retirement — nomination of beneficiary, 19-8-702.

19-3-1302. Effect of no designation. (1) If no living beneficiary is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of said survivor's estate, share and share alike.

(2) Payment shall be made in the same order in which the following groups are listed:

(a) husband or wife;
(b) children;
(c) father and mother;
(d) grandchildren;
(e) brothers and sisters; or
(f) nieces and nephews.

(3) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated.

(4) The payment shall be in full and complete discharge and acquittance of the board and system on account of said death.

History: **En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part).**

Cross-References

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.

19-3-1303. Repealed. Sec. 12, Ch. 496, L. 1981.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(3).

19-3-1304. Payment to custodian of minor beneficiary. (1) If any benefit from the system is payable to a minor, the benefit must be paid to one of the following:

(a) a surviving parent, if any;
(b) a parent awarded custody of the minor in a divorce proceeding;
(c) a custodian designated under Title 72, chapter 26;
(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402; amd. Sec. 11, Ch. 496, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "not to exceed $500" after "benefit from the system", deleted "who has no guardian of his estate" after "minor", changed "may" to "must", and deleted "the person entitled to the custody of a minor to hold for the minor, upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed $1,000 in value." in the first sentence of (1); and added list of persons to whom benefit to be paid in (1).

Cross-References

Custody — best interests of child, 40-4-212.

Part 14

Management of Allowance Payments

19-3-1401. Estimate of allowance when information incomplete. If it shall be impracticable for the board to determine from the records the length of service, the compensation, or the age of any members or if any member refuses or fails to give the board a statement of his state service, his compensation, or his age, the board may estimate, for the purposes of this chapter, such length of service, compensation, or age.

History: En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503.

19-3-1402. Frequency of allowance payments. A retirement allowance or survivorship allowance granted under the provisions of this chapter shall be payable in monthly installments, except that the board, at its discretion, may convert payments of less than $20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1).

Cross-References

Teachers' retirement — benefit payments to be monthly, 19-4-703.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Police retirement — statewide plan — retirement allowances to be monthly and fixed, 19-9-1002.

Firefighters' unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-3-1403. Adjustment of errors in payments. If more or less than the correct amount of contribution required by this chapter of a member, the state, or a contracting employer is or has been paid, proper adjustment shall be made in connection with the subsequent payments or such adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509.

Cross-References

Teachers' retirement — correction of erroneous payments, 19-4-705.

Judges' retirement — correction of erroneous payments, 19-5-703.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Game wardens' retirement — correction of erroneous payments, 19-8-804.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-3-1404. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1.

Cross-References

Judges' retirement — withholding of group insurance premium, 19-5-705.

Highway patrol retirement — withholding of group insurance premium, 19-6-706.

Sheriffs' retirement — withholding of group insurance premium, 19-7-706.

Game wardens' retirement — withholding of group insurance premium, 19-8-806.

Police retirement — statewide plan — withholding of group insurance premium, 19-9-1008.

Police retirement — local funds — withholding of group insurance premium, 19-10-505.

Payments to volunteer fire companies maintaining group insurance, 19-12-103.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

Group life insurance for public employees authorized, 33-20-1104.

CHAPTER 4

TEACHERS' RETIREMENT

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19-4-901. Eligibility for disability retirement.
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19-4-905. Cancellation of allowance and restoration of membership.

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19-4-1001. Allowances for death of member.
19-4-1002. Payments upon death of retiree.

Chapter Cross-References

Public Employees Retirement System, Title 19, ch. 3.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Education, Title 20.

Teachers, superintendents, and principals, Title 20, ch. 4.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-4-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602(1). If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation. The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service with the employer from whom this type of compensation was received to determine a yearly amount. The member and the employer must pay the regular contribution on the termination pay; or

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement to a tax sheltered annuity or deferred compensation program and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(b), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); amd. Sec. 1, Ch. 446, L. 1981; amd. Sec. 1, Ch. 453, L. 1983.

Compiler's Comments

1983 Amendment: In (8), substituted present language of first two sentences for "'Earned compensation' means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind." and inserted third sentence and exception at end.

1981 Amendment: Added the three option in subsection (5)(a), one of which must be selected if earned compensation includes termination pay; and added subsection (5)(b).

Cross-References

Supplemental social security coverage for teachers, 19-1-811.

Community college teachers eligible for retirement system benefits, 20-15-106.

19-4-102. Retirement system. The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is hereby recognized as the state teachers' retirement system of the state of Montana, and no provisions of this chapter shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this chapter.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202.

Cross-References

Social security coverage not to prejudice retirement rights, 19-1-802.

Retirement system to be considered separate for each institution, 19-1-821.

19-4-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from his compensation.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part).

Cross-References

Consent in general, Title 28, ch. 2, part 3.

Implied acceptance, 28-2-503.

19-4-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of annuity reserves in the annuity reserve fund, as provided for in this chapter, and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

19-4-105. Penalty for fraud. A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1).

Cross-References

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Misdemeanor — no penalty specified, 46-18-212.

Part 2

Administration of System

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — statewide plan — administration, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-4-201. Administration by retirement board. The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and to this end, it is the duty of the retirement board to:

(1) establish rules necessary for the proper administration and operation of the retirement system;

(2) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(3) keep a record of all its proceedings, which must be open to public inspection;

(4) publish a biennial report by January 1 of each year the legislature meets which reports in detail the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system and submit the biennial report to the governor and furnish copies to the legislature;

(5) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(6) prepare an annual valuation of the assets and liabilities of the retirement system;

(7) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(8) annually determine the rate of regular interest as prescribed in 19-4-501;

(9) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(10) perform such other duties and functions as are required to properly administer and operate the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Teachers' Retirement Board, 2-15-1010.

Administration of retirement system, Title 19, ch. 3, part 3.

Superintendent of Public Instruction to be on Teachers' Retirement Board, 20-3-106.

19-4-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive $50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204; amd. Sec. 3, Ch. 672, L. 1983.

Compiler's Comments

1983 Amendment: Increased per diem from $25 to $50.

Cross-References

PERS — compensation and expenses of Board members, 19-3-302.

19-4-203. Officers and employees of retirement board. It is the duty of the retirement board to:

(1) elect a chairman from its membership;

(2) appoint a secretary who may be one of its members;

(3) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;

(4) when the retirement board considers it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;

(5) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10).

Cross-References

PERS — powers and duties of Board, 19-3-304.

PERS — employment of actuary, 19-3-305.

19-4-204. Board's policy governing creditable service. It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(1) One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than one year's creditable service shall be awarded for service during the same school fiscal year.

(2) Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14).

Cross-References

PERS — service credits, Title 19, ch. 3, part 5.

Highway patrol retirement — computation of service of a member, 19-6-302.

Police retirement — statewide plan — credited service to be cumulative, 19-9-401.

Firefighters' unified retirement — credited service to be cumulative, 19-13-401.

19-4-205. Board to determine membership. It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-4-302.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12).

Cross-References

PERS — membership, 19-3-401.

Judges' retirement — membership, 19-5-301.

Highway patrol retirement — membership, 19-6-301.

Sheriffs' retirement — membership, 19-7-301.

Game wardens' retirement — membership, 19-8-301.

19-4-206. Board to grant benefits. It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15).

19-4-207. Establishment of a tax-deferred annuity program. The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403(b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219.

19-4-208. Duties of employer. Each employer shall:

(1) deduct the contribution of each member employed by him at the rate prescribed by 19-4-602 from each salary payment for each payroll period and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 19-4-605, at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform him of his rights and obligations relating to the retirement system;

(5) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part).

Cross-References

PERS — employer contributions, Title 19, ch. 3, part 8.

Part 3

Membership

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

19-4-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-4-302, he shall complete an application form prescribed by the retirement board.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1).

19-4-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system;

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of this subsection (1);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), or (c) of this subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209; amd. Sec. 1, Ch. 221, L. 1981; amd. Sec. 1, Ch. 210, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1)(b), after "university system" deleted "except as provided in 19-4-305".

1981 Amendment: Inserted "a special education cooperative" following "the office of a county superintendent" in (1)(c).

Cross-References

Police retirement — statewide plan — active membership, 19-9-301.

Firefighters' unified retirement — active membership, 19-13-301.

Community colleges covered by teachers' retirement system, 20-15-106.

19-4-303. Inactive membership. Any person's active membership in the retirement system shall terminate, but he shall be an inactive member, when:

(1) he ceases to be employed in a capacity that allows his membership and he has 5 or more years of creditable service in the retirement system;

(2) he ceases to be employed in a capacity that allows his membership and he has less than 5 years of creditable service in the retirement system, but his loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy,

marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) he has 5 or more years creditable service and he becomes a member of any other retirement or pension system supported wholly or in part by moneys of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, no person shall be excluded from active membership solely because he is receiving or is eligible to receive retirement benefits from another retirement system.

History: **En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210.**

Cross-References

Social security coverage for teachers, Title 19, ch. 1, part 8.

Police retirement — statewide plan — inactive membership, 19-9-303.

Firefighters' unified retirement — inactive membership, 19-13-303.

Community college trustees and teachers eligible, 20-15-106.

19-4-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when:

(1) he retires on a retirement allowance of the retirement system;

(2) he dies;

(3) he withdraws his accumulated contributions to the retirement system under the provisions of 19-4-603; or

(4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 19-4-303(2).

History: **En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211.**

Cross-References

PERS — termination of membership, 19-3-406.

Police retirement — statewide plan — cessation of membership, 19-9-305.

Firefighters' unified retirement — cessation of membership, 19-13-305.

19-4-305. Repealed. Sec. 2, Ch. 210, L. 1983.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(c).**

Part 4

Creditable Service

Part Cross-References

PERS — service credits, Title 19, ch. 3, part 5.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-4-401. Creditable service. (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404; and

(f) any employment service awarded by the retirement board under the provisions of 19-4-408.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4); amd. Sec. 2, Ch. 551, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2)(f).

Cross-References

PERS — qualification of service with employer, 19-3-505.

Judges' retirement — service credits, 19-5-302.

Highway patrol retirement — computation of the service of a member, 19-6-302.

Police retirement — statewide plan — credited service to be cumulative, 19-9-401.

Firefighters' unififed retirement — credited service to be cumulative, 19-13-401.

19-4-402. Creditable service for out-of-state employment. A person applying for membership may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if such service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979.

19-4-403. Creditable service for employment while on leave. A person applying for membership may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board in an amount not exceeding 2 years, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2).

Cross-References

Employee to be rehired after mandatory military service, 10-2-221.

School district employee's official vacation absence counted as service, 19-3-401.

PERS — absence due to illness or injury, 19-3-504.

Reinstatement to job following pregnancy-related leave of absence, 49-2-311.

19-4-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive, if he has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed application form and proper certification of his military service.

(2) If a member is ineligible for service credit under subsection (1), he may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum

payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3); amd. Sec. 1, Ch. 193, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (1); substituted "If a member is ineligible for service credit under subsection (1), he may apply under the provisions of this subsection" for "A person applying for membership may also apply" at the beginning of (2).

Cross-References

PERS — Absence in military service, 19-3-502.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — military service, 19-6-303.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — local funds — credit for military service, 19-10-405.

Firefighters' unified retirement — military service, 19-13-402.

19-4-405. Limit on creditable service which can be awarded. The total creditable service for out-of-state teaching, employment while on leave, and active service in the armed forces of the United States or the American red cross or merchant marine may not exceed 5 years.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4).

19-4-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September 1, 1937, for which he has not received a prior service certificate. In order to receive the creditable service, he must apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5).

Cross-References

PERS — qualification of prior service not previously credited, 19-3-506.

Game wardens' retirement — credit for prior service, 19-8-303.

19-4-407. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9).

Cross-References

PERS — no duplication of allowance when there is more than one period of service, 19-3-508.

Sheriffs' retirement — no duplication of benefits when there is more than one period of service, 19-7-307.

Game wardens' retirement — no duplication of benefits when there is more than one period of service, 19-8-305.

19-4-408. Creditable service for employment in private schools. A person applying for membership may also apply for creditable service in the retirement system for employment service in a private elementary, secondary, or postsecondary educational institution. Employment service must be of an instructional nature or be employment as an administrative officer or a member of the scientific staff. Employment service does not include students employed by a private elementary, secondary, or postsecondary educational institution. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system or returning to the retirement system, whichever is later, for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in lump-sum payment or in installments as agreed between the person and the retirement board. The provisions of 19-4-405 apply to creditable service purchased under this section.

History: **En. Sec. 1, Ch. 551, L. 1981.**

Cross-References

Education — accreditation and curriculum of schools, Title 20, ch. 7, part 1.

19-4-409. Transfer of service credits from public employees' retirement system. (1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) compensation for all membership service as defined in 19-3-104; and

(b) the salary base used by the public employees' retirement system when granting military service under 19-3-502 and 19-3-503 and service credits for time when a member is absent from service because of injury or illness under 19-3-504.

(2) A member may at any time before his retirement make a written election with the retirement board to qualify in the teachers' retirement system all of his creditable service in the public employees' retirement system.

(3) The amount that must be paid to the retirement system to qualify this service under subsection (2) is the sum of the following:

(a) from the public employees' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-4-602 and 19-4-605, based on the assumed salary, less the amount paid by the employee in subsection (3)(b); and

(b) from the employee, the amount of his accumulated contributions at the time he terminated active membership under 19-3-406 plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If a member who has creditable service in the public employees' retirement system dies before he qualifies this service in the teachers' retirement system and if his service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the employee and employer contributions necessary to qualify this service in the teachers' retirement system as provided in subsection (3)(a).

(7) If the retirement board determines that an individual's membership was erroneously classified, the member's accumulated contributions and service must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in subsection (3)(a) are the liability of the employing entity where the error occurred.

History: **En. Sec. 2, Ch. 290, L. 1983.**

Part 5

Management of Funds

Part Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund, Title 19, ch. 11, part 2.

Firefighters' unified retirement — creation and management of account, Title 19, ch. 13, part 5.

Retirement fund, 20-9-501.

19-4-501. Financial administration of moneys. The members of the retirement board are the trustees of all moneys collected for the retirement system, and as such trustees, they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-4-605(5), the amount to be credited to each reserve shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense account under the provisions of 19-4-606.

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which the moneys are invested. All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution

of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims.

(5) All the reserves established by part 6 of this chapter shall be accounts in the pension trust fund type of the treasury fund structure of the state.

History: **En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7); amd. Sec. 3, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: In (3) and (5), substituted three references to retirement system reserves for references to retirement system funds; near end of (3), substituted "expense account" for "expense fund"; and in (5), after "chapter" deleted ", except the expense fund,", substituted "pension trust fund type" for "agency fund", and deleted last sentence, which read: "The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure."

Cross-References

Authority to invest funds in obligations of housing authority, 7-15-4505.

Unified investment program — general provisions, 17-6-201.

Investment of public funds, 17-6-203.

Permissible investments, 17-6-211.

PERS — management of fund, 19-3-601.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Police retirement — local funds — investment of fund, 19-10-203.

Firefighters' retirement — investment of fund by trustees, 19-11-402.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-4-502. Restrictions on use of moneys. (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system, except as herein provided;

(b) directly or indirectly, for himself or as an agent, in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: **En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8).**

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Judges' retirement — limit on use of fund, 19-5-405.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Police retirement — local funds — limit on use of fund, 19-10-202.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-4-503. Transfer of dormant savings account. The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. No right of the member may be jeopardized by such transfer, and the amount shall be transferred back to the member's annuity savings account upon his request.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6).

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Judges' retirement — transfer of dormant savings account, 19-5-406.

Highway patrol retirement — transfer of dormant savings account, 19-6-407.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Game wardens' retirement — transfer of dormant accounts, 19-8-405.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

19-4-504. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9).

Cross-References

PERS — vesting of retirement allowances upon termination of system, 19-3-606.

Judges' retirement — vesting of retirement allowances upon termination of system, 19-5-407.

Highway patrol retirement — vesting of retirement allowances upon termination of system, 19-6-408.

Sheriffs' retirement — vesting of retirement allowances upon termination of system, 19-7-408.

Game wardens' retirement — vesting of retirement allowances upon termination of system, 19-8-406.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

Part 6

Funds — Contributions

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contribution, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-4-601. Method of financing. The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1).

Cross-References

Retirement fund, 20-9-501.

19-4-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(1) Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 7.044% of the member's earned compensation.

(2) The deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(4) The accumulated contributions of a member withdrawn by him or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2); amd. Sec. 1, Ch. 198, L. 1983; amd. Sec. 1, Ch. 527, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 198 substituted "pension accumulation fund" for "annuity reserve fund" at end of (4).

Chapter 527 increased employee's contribution from 6.187% to 7.044% in (1).

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — member's contribution deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

Employer to furnish itemized statement of deductions, 39-3-101.

19-4-603. Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions from his annuity account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of subsection (1) or (3) of 19-4-303 may elect, without right of revocation, to withdraw his accumulated contributions. If he does not withdraw his accumulated contributions, he remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of 19-4-303(2) may withdraw his accumulated contributions unless he returns to active membership.

(3) Any person whose membership terminates under the provisions of 19-4-304(4) may withdraw his accumulated contributions.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6).

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — refund of member's contribution, 19-6-403.

Sheriffs' retirement — discharge or voluntary resignation prior to eligibility for retirement, 19-7-304.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-4-604. Repealed. Sec. 2, Ch. 251, L. 1981.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(3).

19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities shall be accumulated and from which pensions, annuities, and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 7.320% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the

amount required to allow regular interest on the annuity savings fund shall be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits in lieu thereof shall be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4); amd. Sec. 2, Ch. 193, L. 1981; amd. Sec. 1, Ch. 251, L. 1981; amd. Sec. 9, Ch. 549, L. 1981; amd. Sec. 2, Ch. 527, L. 1983.

Compiler's Comments

1983 Amendment: In (1), increased employer's contribution from 6.463% to 7.320%.

1981 Amendments: Chapter 193 increased percentage in subsection (1) from 6.312% to 6.463%.

Chapter 251 inserted "annuities" twice in the first sentence; deleted "and the annuity reserve fund" after "savings fund" in (5); inserted "annuities" in (6); deleted "the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also" after "accumulation fund" in (7); inserted "necessary" after "amount" at the end of (7); and made other minor changes to reflect amendments.

Chapter 549 increased percentage in (1) from 6.312% to 6.432%.

Coordination — Composite Section — Sum of Increases: Section 3, Ch. 193, L. 1981, provided: "If both this act and HB 45, introduced in the 47th Legislature, are passed and approved, the percentage amount contained in 19-4-605 shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act." House Bill 45 was passed and approved, becoming Ch. 549, L. 1981. In preparing the composite of this section, the Code Commissioner has therefore inserted "6.463" in (1) as the sum of the increases. See 1981 Amendments compiler's comments, this section.

Cross-References

PERS — employer contributions, Title 19, ch. 3, part 8.

Judges' retirement — contributions by state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — state contribution, 19-9-702.

Police retirement — local funds — city's contribution to fund, 19-10-301.

Police retirement — local funds — annual state payments to municipality with police department, 19-10-305.

Firefighters' retirement — contributions to fund, 19-11-501.

Firefighters' unified retirement — employer contribution, 19-13-605.

19-4-606. Expense fund. The expense fund is the fund to which all moneys for the administrative expenses of the retirement system shall be credited and from which the expenses of administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund out of the pension accumulation fund from interest and other earnings realized on the moneys of the retirement system.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5).

Cross-References

Judges' retirement — administrative expenses, 19-5-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — expenses of administration, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Part 7

Benefits in General

Part Cross-References

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-4-701. Benefits. The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions of this chapter.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1).

Cross-References

Firefighters' retirement — benefits the association may provide, 19-11-601.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

19-4-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in part 8 of this chapter and 19-4-902. If a beneficiary dies within 30 days after retirement, his election to receive an optional allowance is void and his death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's retirement or disability allowance at the time of his retirement and provides an allowance payable to him throughout his lifetime and, upon his death, an allowance payable to the person that he nominated by written designation, duly acknowledged and filed with the retirement board at the time of his retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout his lifetime and, upon his death, continue throughout the lifetime of his designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout his lifetime, and upon his death, one-half of the optional allowance will be continued throughout the lifetime of his designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout his lifetime, and upon his death, two-thirds of the optional allowance will be continued throughout the lifetime of his designated beneficiary.

(d) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor.

(f) Option F—some other benefit will be paid either to the member or his surviving designated beneficiary in accordance with provisions approved by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8).

Cross-References

PERS — optional retirement allowance, 19-3-1101.

Judges' retirement — optional retirement allowance, 19-5-701.

Highway patrol retirement — optional retirement allowance, 19-6-701.

Sheriffs' retirement — optional retirement allowance, 19-7-701.

Game wardens' retirement — optional retirement allowance, 19-8-801.

19-4-703. Payments to be monthly. All pensions and annuities shall be paid in equal monthly installments.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part).

Cross-References

Benefits tax exempt, 15-30-111.

PERS — frequency of allowance payments, 19-3-1402.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Police retirement — statewide plan — retirement allowances to be monthly and fixed, 19-9-1002.

Firefighters' unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-4-704. Annual payment from extra income. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part).

19-4-705. Correction of erroneous payments. If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2).

Cross-References

PERS — Adjustment of errors in payment, 19-3-1403.

Judges' retirement — correction of erroneous payments, 19-5-703.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-4-706. Exemption from taxation and legal process. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are hereby exempted from any state, county, or municipal tax of the state of Montana and shall not be subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process whatsoever and shall be unassignable except as specifically provided.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215.

Cross-References

Benefits tax exempt, 15-30-111.

PERS — exemption from taxes and legal process, 19-3-105.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

Garnishment — earnings of judgment debtor, 25-13-614.

Prejudgment attachment, Title 27, ch. 18.

19-4-707. Increase in allowances of certain retirees. (1) On July 1, 1977, every beneficiary receiving a retirement allowance who was receiving such allowance prior to July 1, 1971, will be entitled to an increase in his monthly retirement allowance of $1 per month for each year of creditable service plus $2 per month for each year he was retired prior to July 1, 1971. In the case of beneficiaries who are receiving an early retirement allowance, the latter figure of $2 per month shall be multiplied by a fraction, the numerator of which is the number of years of his creditable service and the denominator of which is 30.

(2) The funds to pay for the increases in retirement allowances prescribed in subsection (1) shall be provided as follows:

(a) one-half from an increase, sufficient for the purpose, in the payroll deduction provided for in 19-4-602(1); and

(b) one-half from an increase, sufficient for the purpose, in the employer's contribution provided for in 19-4-605(1).

History: (1)En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; Sec. 75-6208, R.C.M. 1947; (2)En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977; Sec. 75-6207.1, R.C.M. 1947; R.C.M. 1947, 75-6207.1, 75-6208(3)(c).

Cross-References

PERS — adjustment of allowance for certain members, 19-3-905.

Police retirement — statewide plan — supplement to certain provisions, 19-9-1007.

Police retirement — local funds — supplement to certain pensions, 19-10-506.

Firefighters' retirement — supplement to certain pensions, 19-11-606.

Firefighters' unified retirement — supplement to certain retirement allowances, 19-13-1006.

Part 8

Superannuation Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-4-801. Eligibility for superannuation retirement. A member who has at least 5 full years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from service if he files with the retirement board his written application setting forth the fact of his retirement.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a); amd. Sec. 3, Ch. 527, L. 1983.

Compiler's Comments

1983 Amendment: Reduced retirement period from 30 to 25 years.

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

19-4-802. Early retirement. (1) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement.

(2) The early retirement allowance shall be determined as prescribed in 19-4-804(1) and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by ½ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 25 years of creditable service.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d); amd. Sec. 1, Ch. 396, L. 1981; amd. Sec. 7, Ch. 549, L. 1981; amd. Sec. 4, Ch. 527, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(a) and (2)(b), reduced number of years to be figured for full retirement from 30 to 25.

1981 Amendments: Chapter 396 decreased early retirement age from 55 to 50 in (1); inserted "up to a maximum of 60 months" after "number of months" in (2)(a); added subsection (2)(b); and made minor changes in phraseology.

Chapter 549 changed reference in (2) from "19-4-804(2)" to "section 5, Chapter 549, Laws of 1981".

Cross-References

PERS — eligibility for early retirement, 19-3-902.

Judges' retirement — involuntary retirement allowance, 19-5-503.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Sheriffs' retirement — early retirement option, 19-7-502.

19-4-803. Repealed. Sec. 2, Ch. 210, L. 1983.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(b); amd. Sec. 5, Ch. 114, L. 1979.

19-4-804. Allowance for superannuation retirement. (1) Upon superannuation retirement a member shall receive a retirement allowance consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of creditable service.

(2) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of his average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b); amd. Sec. 6, Ch. 549, L. 1981; amd. Sec. 1, Ch. 443, L. 1983.

Compiler's Comments

1983 Amendment: Increased and further defined amount a retired member can receive from "the greater of an amount not to exceed one-fourth of his average final compensation and one-fourth of the median of the average final compensation . . .".

1981 Amendment: Deleted subsection that provided a minimum annual retirement allowance of $2,400 for a member who has 30 or more years of service and a reduced allowance for a member with less than 30 years based on a ratio.

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

Part 9

Disability Retirement

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

19-4-901. Eligibility for disability retirement. Upon the application of an active member or of his employer for a disability retirement allowance, any active member who has 5 or more years of creditable service may be retired by the retirement board the month immediately following the month in which his disability caused his retirement. In order for a member to be eligible for disability retirement, the retirement board must certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent, and that he should be retired.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a).

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.

Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.

Police retirement — local funds — eligiblity for disability retirement, 19-10-402.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.

19-4-902. Allowance for disability retirement. (1) Upon retirement for disability, a member shall receive the superannuation allowance and other benefits prescribed under part 8 of this chapter if he is eligible.

(2) If he is not eligible for the benefits prescribed under part 8 of this chapter, he shall receive a disability retirement allowance which consists of:

(a) an annuity which is the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) a pension which, together with his annuity, provides a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-fourth of his average final compensation; otherwise, a pension which, together with his annuity, provides a total retirement allowance equal to one-fourth of his average final compensation.

(3) No allowance under subsection (2) may exceed one-sixtieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c).

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of disability retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-4-903. Medical examination of disability retiree. (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require and, upon the beneficiary's application, shall permit a disability beneficiary who has not yet attained the age of 60 to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon.

(2) Should a disability beneficiary who has not yet attained the age of 60 refuse to submit to at least one medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for 1 year, all his rights in and to his disability pension may be revoked by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b).

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — board's determination of disability, 19-9-901.

Volunteer Firefighters' Compensation Act — medical review of certain disability retirees, 19-12-408.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

19-4-904. Adjustment of allowance. (1) If the medical board reports and certifies to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and his retirement allowance, whichever is greater, and if the retirement board concurs in such report, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, is equal to his average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

(2) If his earning capacity is changed later, his pension may be further modified, but the new pension may not exceed the pension originally granted

or an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation.

(3) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired may not become a member of the retirement system while receiving a reduced benefit.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c); amd. Sec. 1, Ch. 197, L. 1983.

Compiler's Comments

1983 Amendment: Near middle and at end of (1), after "average final compensation" inserted provision relating to median salary of retirees during preceding year.

Cross-References

PERS — disability allowance reduced by earnings, 19-3-1103.

19-4-905. Cancellation of allowance and restoration of membership. (1) If a disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force, and upon his subsequent retirement, he shall be credited with such prior service and all his subsequent service as a member.

(2) If he is restored to active service on or after the attainment of the age of 55 years, his pension upon subsequent retirement may not exceed the pension that he would have received had he remained in service during the period of his previous retirement or the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d).

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of allowance, 19-9-905.

Volunteer Firefighters' Compensation Act — cancellation and reinstatement of certain pensions, 19-12-409.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Firefighters' unified retirement — reinstatement upon termination of allowance, 19-13-805.

Part 10

Death Benefits

Part Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-4-1001. Allowances for death of member. (1) If a member dies before retirement, his accumulated contributions shall be paid to his estate or such person as he may have nominated by a written designation filed with the retirement board prior to his death in the manner prescribed by the board.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in 19-4-802, 19-4-804(1), and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-4-702(2)(a).

(b) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of $500 is payable to his designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of $100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 8, Ch. 549, L. 1981.

Compiler's Comments

1981 Amendment: Changed reference in (2)(a) from 19-4-804(2) to sec. 5, Ch. 549, L. 1981.

Cross-References

PERS — eligibility for death benefits, 19-3-1201.

Judges' retirement — payments upon employment-related death, 19-5-603.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Volunteer Firefighters' Compensation Act — death benefit, 19-12-505.

Firefighters' unified retirement — payment of service or disability allowance upon death of member, 19-13-901.

19-4-1002. Payments upon death of retiree. (1) In the event of the death of a member after retirement, a death benefit of $500 is payable to his designated beneficiary.

(2) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of his death, the sum of $100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part).

Cross-References

Judges' retirement — payments in case of death from other causes, 19-5-604.

Highway patrol retirement — payments upon death from other causes, 19-6-604.

Sheriffs' retirement — payments in case of death after retirement, 19-7-603.

Game wardens' retirement — payments upon death from other causes, 19-8-704.

CHAPTER 5

JUDGES' RETIREMENT

Part 1 — General Provisions

Section
19-5-101. Definitions.
19-5-102. Retirement system.
19-5-103. Call of retired judge for duty.
19-5-104. Penalty for fraud.

Part 2 — Administration

19-5-201. Powers and duties of board.
19-5-202. Administrative expenses.

Part 3 — Membership and Service Allowance

19-5-301. Membership.
19-5-302. Service credits.
19-5-303. Back payments by original members.
19-5-304. Military service.

Part 4 — Judges' Retirement Fund—Contributions

19-5-401. Payments into fund.
19-5-402. Member's contribution deducted from salary.
19-5-403. Refunds in case of resignation or discharge.
19-5-404. Contributions by the state.
19-5-405. Limit on use of fund.
19-5-406. Transfer of dormant savings accounts.
19-5-407. Vesting of retirement allowances upon termination of system.

Part 5 — Service Retirement

19-5-501. Eligibility for service retirement.
19-5-502. Service retirement allowance.
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19-5-701. Optional retirement allowance.
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19-5-704. Exemption from taxes and legal process.
19-5-705. Withholding of group insurance premium from retirement benefit.

Chapter Cross-References

Courts and judicial officers generally, Title 3, ch. 1.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Beneficiary" means the person whom the contributor nominates by written designation, duly acknowledged and filed with the board.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.

(6) "Final salary" means the annual current salary for the office retired from.

(7) "Fund" means the Montana judges' retirement system pension trust fund.

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

(10) "Penalty retirement age" means 70 years of age.

(11) "Retired judge" means any judge or justice in receipt of a retirement allowance under this chapter.

(12) "Retirement allowance" means the state annuity plus the member's annuity.

(13) "State annuity" means payments for life derived from contributions made by the state of Montana.

History: **En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969; amd. Sec. 1, Ch. 251, L. 1975; amd. Sec. 1, Ch. 63, L. 1977; amd. Sec. 5, Ch. 132, L. 1977; R.C.M. 1947, 93-1107; amd. Sec. 4, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: In (7), changed "agency account" to "pension trust fund".

Cross-References

Public Employees' Retirement Board, 2-15-1009.

19-5-102. Retirement system. There is a retirement system known as the Montana judges' retirement system, which is governed by the provisions of this chapter.

History: **En. 93-1107.1 by Sec. 2, Ch. 63, L. 1977; R.C.M. 1947, 93-1107.1.**

19-5-103. Call of retired judge for duty. (1) Every judge or justice who has voluntarily retired after 8 years of service shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court, any district court, or any water court under such directions as the supreme court may give, including the examination of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court, or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court. Such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases insofar as not inconsistent with the constitution of the state.

(2) Such retired judge or justice, when called to service as herein provided, shall be reimbursed for his actual expenses, if any, in responding to such call. In addition, for each day of service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the service is rendered minus an amount equal to one-twentieth of the monthly retirement allowance the retired justice or judge is receiving, if any, for each day of service rendered.

History: **En. Sec. 24, Ch. 289, L. 1967; R.C.M. 1947, 93-1130; amd. Sec. 1, ch. 254, L. 1979; amd. Sec. 5, Ch. 80, L. 1981; amd. Sec. 3, Ch. 256, L. 1983; amd. Sec. 1, Ch. 425, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 256 deleted "temporary" before "service" in two places in (2).

Chapter 425 substituted, at beginning of (1), "Every judge or justice who has voluntarily retired after 8 years of service shall" for "Every judge or justice receiving retirement pay under the provisions of this chapter shall,"; near end of (2) inserted ", if any," after "the monthly retirement allowance the retired judge or justice is receiving".

1981 Amendment: Inserted "or any water court" in the first sentence; added "supreme court, district court, or water court, or to serve as water judge" at end of the first sentence.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Judicial Standards Commission, Title 3, ch. 1, part 11.

Salaries and expenses of District Judges, 3-5-211.

Water Judges, Title 3, ch. 7, part 2.

19-5-104. Penalty for fraud. (1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 2

Administration

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — statewide plan — administration of plan, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-5-201. Powers and duties of board. (1) The board is the trustee of all moneys collected for the retirement system and may establish such rules as it considers necessary. Within the limitations of this chapter, the board is charged with and is the authority as to its proper administration, operation, and enforcement. The board is the authority as to the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

(2) The board shall keep such data as is necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(1), (2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — administration by Teachers' Retirement Board, 19-4-201.

Sheriffs' retirement — functions of Board, 19-7-201.

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Firefighters' retirement — Board of Trustees of association, 19-11-104.

Firefighters' unified retirement — power and duties of Board, 19-13-202.

Montana Trustees' Powers Act, Title 72, ch. 21.

19-5-202. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system pension trust fund.

History: En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969; amd. Sec. 3, Ch. 63, L. 1977; R.C.M. 1947, 93-1110; amd. Sec. 1, Ch. 235, L. 1981; amd. Sec. 5, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Substituted "may" for "shall" near the end of (1) and near the beginning of (2).

Cross-References

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — expenses of administration, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Firefighters' unified retirement — administrative expenses, 19-13-204.

Part 3

Membership and Service Allowance

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-5-301. Membership. (1) A judge or justice who was a member of the PERS prior to March 2, 1967, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1967.

(2) Every other judge of a district court or justice of the supreme court must be a member of the Montana judges' retirement system.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(1), (2).

Cross-References

PERS — membership, 19-3-401.

PERS — refund when member dies after transferring to another system, 19-3-404.

19-5-302. Service credits. (1) In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this chapter. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

(2) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of a member.

History: (1)En. Sec. 8, Ch. 289, L. 1967; Sec. 93-1114, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1114, 93-1125(part).

Cross-References

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — creditable service, 19-4-401.

Highway patrol retirement — computation of the service of a member, 19-6-302.

Police retirement — statewide plan — credited service to be cumulative, 19-9-401.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters' unified retirement — credited service to be cumulative, 19-13-401.

19-5-303. Back payments by original members. (1) A judge or justice who was in service in either a district court or the supreme court of the state of Montana prior to July 1, 1967, may elect to make back payments to the date when he first entered the service of the judiciary. The back payments may be spread over a period of 5 years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by 60. The deduction increase shall be credited to the back payments owing and shall be continued until the full amount of the back payments has been paid.

(2) A deduction increase may be anticipated in part or in full by the contributor at any time. In order for the contributor to receive full credit for his service, it must be anticipated in full at the time of retirement. If it is not so anticipated and paid in full, the contributor's retirement allowance will be calculated for the total years and months on which contributions have been made in accordance with 19-5-502.

(3) Every contributor who elects to make back payments shall receive full credit for all contributions made into the fund and for all service credits to which he might thereby be entitled.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(3).

Cross-References

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-308.

Police retirement — statewide plan — effect on members of prior plans, 19-9-106.

19-5-304. Military service. (1) A member of the Montana judiciary inducted into the armed forces of the United States has the option to:

(a) continue his payments into the fund; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the fund the full amount of the payments within 2 years after his return to the Montana judiciary.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the judiciary.

History: En. Sec. 22, Ch. 289, L. 1967; amd. Sec. 9, Ch. 63, L. 1977; R.C.M. 1947, 93-1128.

Cross-References

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — absence in military service, 19-3-502.

PERS — election to qualify military service for full credit, 19-3-503.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Highway patrol retirement — military service, 19-6-303.

Highway patrol retirement — election to qualify military service for full credit, 19-6-304.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Police retirement — local funds — credit for military service, 19-10-405.

Police retirement — local funds — election to qualify previous military service, 19-10-406.

Firefighters' unified retirement — military service, 19-13-402.

Part 4

Judges' Retirement Fund — Contributions

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-5-401. Payments into fund. All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and moneys in the fund shall be paid to the public employees' retirement division of the department of administration, which shall credit the payments to the fund. These funds may be commingled with funds of the PERS, but separate accounts shall be maintained for the Montana judges' retirement system.

History: En. Sec. 5, Ch. 289, L. 1967; amd. Sec. 4, Ch. 63, L. 1977; R.C.M. 1947, 93-1111.

Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Highway patrol retirement — payments into retirement account, 19-6-401.

Sheriffs' retirement — sources of money in account, 19-7-402.

Game wardens' retirement — contributions to retirement account, 19-8-501.

Firefighters' retirement — contributions to fund, 19-11-501.

19-5-402. Member's contribution deducted from salary. Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to

7% of his monthly salary beginning on the first day of his term. This sum shall be deducted from his salary and credited to his account in the fund.

History: En. Sec. 9, Ch. 289, L. 1967; R.C.M. 1947, 93-1115; amd. Sec. 2, Ch. 524, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of section after "salary" inserted "except that a member ... first day of his term"; and before "sum" substituted "This" for "which".

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — method of financing, 19-4-601.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — members' contributions deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

Employer to furnish itemized statement of deductions, 39-3-101.

19-5-403. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 289, L. 1967; R.C.M. 1947, 93-1122.

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Highway patrol retirement — refund of member's contribution, 19-6-403.

Sheriffs' retirement — discharge or voluntary resignation prior to eligibility for retirement, 19-7-304.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-5-404. Contributions by the state. The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of the fees collected under 25-1-201 to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund.

History: En. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 2, Ch. 548, L. 1977; R.C.M. 1947, 93-1116(part); amd. Sec. 3, Ch. 524, L. 1983.

Compiler's Comments

1983 Amendment: Increased percentage of district court fees transmitted to state from 60% to 68%; and increased percentage deposited in retirement fund from 20% to 31%.

Cross-References

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — state contribution, 19-9-702.

Police retirement — local funds — annual state payments to municipality with police department, 19-10-305.

Firefighters' unified retirement — state contribution, 19-13-604.

19-5-405. Limit on use of fund. The full amount of the fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the retirement benefits and expenses provided for herein. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: Ap. p. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 548, L. 1977; Sec. 93-1116, R.C.M. 1947; Ap. p. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; Sec. 93-1112, R.C.M. 1947; R.C.M. 1947, 93-1112(3), 93-1116(part).

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Teachers' retirement — restrictions on use of money, 19-4-502.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Police retirement — local funds — limit on use of fund, 19-10-202.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-5-406. Transfer of dormant savings accounts. The board may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of 10 years, provided that no right of the member shall be jeopardized by such transfer. The savings account shall be transferred to the member's name upon subsequent reentry to membership.

History: En. Sec. 27, Ch. 289, L. 1967; R.C.M. 1947, 93-1132.

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Highway patrol retirement — transfer of dormant savings account, 19-6-407.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

19-5-407. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(4).

Cross-References

PERS — vesting of retirement allowances upon termination of system, 19-3-606.

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-4-504.

Highway patrol retirement — vesting of retirement allowances upon termination of system, 19-6-408.

Sheriffs' retirement — vesting of retirement allowances upon termination of system, 19-7-408.

Game wardens' retirement — vesting of retirement allowances upon termination of system, 19-8-406.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

Part 5

Service Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-5-501. Eligibility for service retirement. (1) Any member who has completed at least 5 years or more service and has reached the age of 65 may retire and receive the proportional retirement allowances provided in 19-5-502.

(2) No retirement allowances may be approved by the board while the member is drawing full compensation as a judge or justice.

History: (1)En. Sec. 11, Ch. 289, L. 1967; Sec. 93-1117, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1117, 93-1125(part).

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

19-5-502. Service retirement allowance. Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 ⅓% per year of his final salary for the first 15 years' service and 1% per year for each year's service thereafter.

History: En. Sec. 12, Ch. 289, L. 1967; R.C.M. 1947, 93-1118.

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-5-503. Involuntary retirement allowance. (1) If a contributor is involuntarily discontinued from service after having completed 5 years of total service but before reaching retirement age, he shall, upon filing an application in the manner prescribed by the board, be paid whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity then standing to his credit.

(2) If a contributor elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having completed 12 years of total service but before reaching retirement age, he shall, upon filing an application in the manner prescribed by the board, be paid whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502.

(3) If a contributor elected or appointed to office after July 1, 1983, is involuntarily discontinued from service after having completed 12 years of total service but before reaching retirement age, he may apply for and receive benefits under this chapter pursuant to subsection (1).

History: En. Sec. 14, Ch. 289, L. 1967; amd. Sec. 1, Ch. 89, L. 1975; amd. Sec. 8, Ch. 63, L. 1977; R.C.M. 1947, 93-1120; amd. Sec. 4, Ch. 524, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), after "contributor" inserted "elected or appointed to office prior to July 1, 1983"; and inserted (3).

Cross-References

PERS — early retirement allowance, 19-3-906.

Teachers' retirement — early retirement, 19-4-802.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Sheriffs' retirement — involuntary retirement allowance, 19-7-504.

Game wardens' retirement — involuntary retirement allowance, 19-8-604.

19-5-504. Forfeiture of retirement allowance. Any judge or justice who becomes eligible for retirement hereunder but fails to make application therefor prior to his attaining the age of 70 years shall automatically waive all retirement benefits and shall receive a return of only such moneys equal to the accumulated deductions contributed by him, except that any judge or justice who is over the age of 70 years on July 1, 1967, or who shall attain such age before the expiration of his term shall be permitted to serve out the balance of his existing term without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make application for retirement under this chapter, he shall automatically waive all retirement benefits hereunder and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

History: En. Sec. 15, Ch. 289, L. 1967; R.C.M. 1947, 93-1121.

Cross-References

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Volunteer Firefighters' Compensation Act — procedure for claiming pension benefits, 19-12-403.

Firefighters' unified retirement — application for service retirement, 19-13-703.

Part 6

Disability Retirement and Death Benefits

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-5-601. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half of his final salary or the allowance provided in 19-5-502, whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of 60 years, the maximum monthly payment shall be the retirement allowance as provided in 19-5-502.

History: En. Sec. 13, Ch. 289, L. 1967; R.C.M. 1947, 93-1119.

Cross-References

Supreme Court power to retire for disability on recommendation of Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.

Action by Supreme Court on recommendation of Judicial Standards Commission, 3-1-1107.

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of disability retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-5-602. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

History: En. Sec. 21, Ch. 289, L. 1967; R.C.M. 1947, 93-1127.

Cross-References

PERS — designation of beneficiary, 19-3-1301.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Highway patrol retirement — nomination of beneficiary, 19-6-602.

Sheriffs' retirement — designation of beneficiary, 19-7-602.

Game wardens' retirement — nomination of beneficiary, 19-8-702.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Volunteer Firefighters' Compensation Act — pension benefits to surviving spouse or children, 19-12-405.

19-5-603. Payments upon employment-related death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(1) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(2) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502.

History: **En. Sec. 17, Ch. 289, L. 1967; R.C.M. 1947, 93-1123.**

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — allowances for death of member, 19-4-1001.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — death benefits, 19-12-505.

Firefighters' unified retirement — payment of service or disability allowance upon death of member, 19-13-901.

19-5-604. Payments in case of death from other causes. (1) If the retired judge or justice dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-5-503.

History: **En. Sec. 18, Ch. 289, L. 1967; R.C.M. 1947, 93-1124.**

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — payments upon death of retiree, 19-4-1002.

Highway patrol retirement — payments upon death from other causes, 19-6-604.

Sheriffs' retirement — payments in case of death after retirement, 19-7-603.

Game wardens' retirement — payments upon death from other causes, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — death benefits, 19-12-505.

Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-5-605 through 19-5-610 reserved.

19-5-611. Determination by board. The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

History: **En. Sec. 1, Ch. 597, L. 1981.**

Cross-References

Officers who may administer oaths, 1-6-101.

Administrative hearing, 2-4-612.

PERS — disability — determination by Board, 19-3-1003.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Highway patrol retirement — disability — determination by Board, 19-6-611.

Sheriffs' retirement — disability — determination by Board, 19-7-611.

Game wardens' retirement — disability — determination by Board, 19-8-711.

Police retirement — statewide plan — Board's determination of disability, 19-9-901.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — Board's determination of disability, 19-13-801.

Depositions, Rules 30 and 31, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

19-5-612. Medical examination of disability retiree — cancellation of allowance. (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, his retirement allowance must be canceled.

(2) The cancellation of a retirement allowance because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability allowance.

History: **En. Sec. 2, Ch. 597, L. 1981.**

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of allowance, 19-9-905.

Volunteer Firefighters' Compensation Act — medical review of certain disability retirees, 19-12-408.

Volunteer Firefighters Compensation Act — cancellation and reinstatement of certain pensions, 19-12-409.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Part 7

Benefits in General

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-5-701. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. Sec. 25, Ch. 289, L. 1967; amd. Sec. 10, Ch. 63, L. 1977; R.C.M. 1947, 93-1131.

Cross-References

PERS — optional retirement allowance, 19-3-1101.

Teachers' retirement — optional allowances, 19-4-702.

Highway patrol retirement — optional retirement allowance, 19-6-701.

Sheriffs' retirement — optional retirement allowance, 19-7-701.

Game wardens' retirement — optional retirement allowance, 19-8-801.

Police retirement — statewide plan — retirement allowances to be monthly and fixed, 19-9-1002.

19-5-702. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in equal monthly installments and may not be increased, decreased, revoked, or repealed unless by act of the legislature of the state of Montana.

History: En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; R.C.M. 1947, 93-1125(part).

Cross-References

PERS — frequency of allowance payments, 19-3-1402.

Teachers' retirement — payments to be monthly, 19-4-703.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Firefighters' unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-5-703. Correction of erroneous payments. Should any change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

History: **En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).**

Cross-References

PERS — adjustment of errors in payments, 19-3-1403.

Teachers' retirement — correction of erroneous payments, 19-4-705.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Game wardens' retirement — correction of erroneous payments, 19-8-804.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-5-704. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-5-705.

History: **En. Sec. 20, Ch. 289, L. 1967; amd. Sec. 10, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.**

Cross-References

Benefits tax exempt, 15-30-111.

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

Garnishment — earnings of judgment debtor, 25-13-614.

Prejudgment attachment, Title 27, ch. 18.

19-5-705. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 93-1126.1 by Sec. 11, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.1.**

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Highway patrol retirement — withholding of group insurance premium from retirement benefit, 19-6-706.

Sheriffs' retirement — withholding of group insurance premium from retirement benefit, 19-7-706.

Game wardens' retirement — withholding of group insurance premium from retirement benefit, 19-8-806.

Police retirement — statewide plan — withholding of group insurance premium from retirement benefit, 19-9-1008.

Police retirement — local funds — withholding of group insurance premium from retirement benefit, 19-10-505.

Volunteer Firefighters' Compensation Act — payments to volunteer fire companies maintaining group insurance, 19-12-103.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

CHAPTER 6

HIGHWAY PATROL RETIREMENT

Part 1 — General Provisions

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Part 6 — Disability Retirement and Death Benefits

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19-6-602. Nomination of beneficiary.
19-6-603. Payments upon employment-related death.

19-6-604. Payments upon death from other causes.
19-6-605 through 19-6-610 reserved.
19-6-611. Determination by board.
19-6-612. Medical examination of disability retiree — cancellation of allowance.

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19-6-701. Optional retirement allowance.
19-6-702. Payments to be monthly and fixed.
19-6-703. Board's authority to refuse payments.
19-6-704. Correction of erroneous payments.
19-6-705. Exemption from taxes and legal process.
19-6-706. Withholding of group insurance premium from retirement benefit.

Chapter Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Highway patrol, Title 44, ch. 1.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — local funds — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement pension trust fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Department" means the public employees' retirement division of the department of administration.

(8) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means a person who has accumulated deductions in the account standing to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member.

(11) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(12) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol or 60 years of age, whichever occurs first.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974; amd. Sec. 1, Ch. 65, L. 1977; amd. Sec. 1, Ch. 332, L. 1977; R.C.M. 1947, 31-201; amd. Secs. 6, 7, Ch. 114, L. 1979; amd. Sec. 1, Ch. 206, L. 1981; amd. Sec. 6, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Deleted former subsection (9), defining "involuntary retirement", and former subsection (12), defining "optional retirement age"; added "or 60 years of age, whichever occurs first" at the end of (12).

19-6-102. Retirement system. There is a retirement system known as the Montana highway patrolmen's retirement system, which is governed by the provisions of this chapter.

History: En. Sec. 31-201.1 by Sec. 2, Ch. 65, L. 1977; R.C.M. 1947, 31-201.1.

19-6-103. Payments under workers' compensation. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the Workers' Compensation Act of the state of Montana.

History: En. Sec. 27, Ch. 37, L. 1945; R.C.M. 1947, 31-227.

Cross-References

Workers' compensation, Title 39, ch. 71.

19-6-104. Penalty for fraud. (1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system.

(2) A person violating any of the provisions of subsection (1) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not

exceeding $1,000 or imprisoned not exceeding 1 year or both fined and imprisoned.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(a), (2).

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

"Misdemeanor" defined, 45-2-101.

19-6-105. Repealed. Sec. 5, Ch. 206, L. 1981.

History: En. Sec. 26, Ch. 37, L. 1945; R.C.M. 1947, 31-226; amd. Sec. 7, Ch. 114, L. 1979.

Part 2

Administration

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement - statewide plan — administration of plan, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-6-201. Board to make rules. The board is the trustee of all moneys collected for the retirement system. It may establish such rules as it considers necessary to carry out its functions under this chapter. The board shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — Board to determine membership, 19-4-205.

Judges' retirement — powers and duties of Board, 19-5-201.

Sheriffs' retirement — functions of Board, 19-7-201.

Game wardens' retirement — Board to make rules, 19-8-201.

Police retirement — statewide plan — powers and duties of Board, 19-9-201.

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Volunteer Firefighters' Compensation Act — rules to be made by Division of Workers' Compensation and Board, 19-12-203.

Firefighters' unified retirement — power and duties of Board, 19-13-202.

Freedom from discrimination, 49-1-102.

Montana Trustees' Powers Act, Title 72, ch. 21.

19-6-202. Board to keep actuarial data. The board shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the members to and the beneficiaries of the account and shall adopt for the retirement system one or more mortality tables.

History: **En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part); amd. Sec. 7, Ch. 114, L. 1979.**

Cross-References

PERS — employment of actuary — biennial investigation and valuation, 19-3-305.

Game wardens' retirement — Board to keep actuarial data, 19-8-202.

Police retirement — local funds — actuarial valuation of police retirement fund, 19-10-205.

Firefighters' unified retirement — actuarial valuation, 19-13-504.

19-6-203. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the account.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the account to the public employees' retirement system pension trust fund.

History: **En. Sec. 4, Ch. 37, L. 1945; R.C.M. 1947, 31-204; amd. Sec. 2, Ch. 235, L. 1981; amd. Sec. 14, Ch. 79, L. 1983; amd. Sec. 7, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendments: Both Ch. 79 and 282 changed "fund" to "account" at end of (1) and in (2), after "from the". In addition, Ch. 282, at end of section, substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Substituted "may" for "shall" near the end of (1); substituted "from the fund" for "by the state of Montana by appropriation out of the general fund made on the basis of budgets submitted by the board" at the end of (1); added subsection (2).

Cross-References

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Judges' retirement — administrative expenses, 19-5-202.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — expenses of administration, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Volunteer Firefighters' Compensation Act — office supplies to be a charge against the fund, 19-12-204.

Firefighters' unified retirement — administrative expenses, 19-13-204.

Part 3

Membership and Credit for Service

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-6-301. Membership. All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

History: **En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974; amd. Sec. 3, Ch. 65, L. 1977; R.C.M. 1947, 31-207.**

Cross-References

PERS — membership, 19-3-401.

Teachers' retirement — Board to determine membership, 19-4-205.

Judges' retirement — membership, 19-5-301.

Sheriffs' retirement — membership, 19-7-301.

Game wardens' retirement — membership, 19-8-301.

Police retirement — statewide plan — active membership, 19-9-301.

Firefighters' unified retirement — active membership, 19-13-301.

19-6-302. Computation of the service of a member. (1) In computing the length of service of a member for retirement purposes, full credit shall be given to each member for each year of service rendered to the patrol, including service rendered prior to July 1, 1945, if there is compliance with the provisions of this chapter. The time during which a member is absent from service without pay may not be counted in computing his service for retirement purposes, except as provided in 19-6-303 and 19-6-304 in regard to service with the armed forces of the United States.

(2) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: (1)En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955; amd. Sec. 4, Ch. 65, L. 1977; Sec. 31-208, R.C.M. 1947; (2)En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; Sec. 31-220, R.C.M. 1947; R.C.M. 1947, 31-208(part), 31-220(part); amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — creditable service, 19-4-401.

Judges' retirement — service credits, 19-5-302.

Police retirement — statewide plan — credited service to be cumulative, 19-9-401.

Firefighters' unified retirement — credited service to be cumulative, 19-13-401.

19-6-303. Military service. (1) A member of the Montana highway patrol inducted into the armed forces of the United States has the option to:

(a) continue his payments into the fund; or

(b) allow the department to make his payments for him during his military service, in which event he must repay the fund the full amount of the payments within 2 years after his return to the Montana highway patrol.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the Montana highway patrol.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(1).

Cross-References

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — absence in military service, 19-3-502.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Judges' retirement — military service, 19-5-304.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — local funds — credit for military service, 19-10-405.

Firefighters' unified retirement — military service, 19-13-402.

19-6-304. Election to qualify military service for full credit. (1) A member with 15 years or more of service with the Montana highway patrol may, at any time prior to his retirement, make a written election with the department to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this same service pursuant to 19-6-303.

(2) To qualify this service he must contribute to the account the amount determined by the department due based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has service with the Montana highway patrol in excess of 15 years.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(2).

Cross-References

PERS — election to qualify military service for full credit, 19-3-503.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Police retirement — local funds — election to qualify previous military service, 19-10-406.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

19-6-305. Qualification of service from other Montana public retirement systems. (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the highway patrolmen's retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the highway patrolmen's retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrolmen's retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-6-201 upon contribution by the employee of the actuarial cost of granting this service in the highway patrolmen's retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: **En. Sec. 2, Ch. 145, L. 1981; amd. Sec. 2, Ch. 331, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence of (1)(a) inserted firefighters' unified retirement system; inserted (2).

Cross-References

Sheriffs' retirement — service under Municipal Police Officers' Retirement System prior to or following city-county consolidation, 19-7-308.

Sheriffs' retirement — qualification of service from other Montana public retirement systems, 19-7-309.

Game wardens' retirement — qualification of service from other Montana public retirement systems, 19-8-306.

Police retirement — statewide plan — service under sheriffs' retirement system prior to or following city-county consolidation, 19-9-404.

Police retirement — statewide plan — qualification of service from other Montana public retirement systems, 19-9-405.

Part 4

Retirement Account — Contributions

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-6-401. Payments into retirement fund. All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement pension trust fund.

History: **En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 8, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: At end of section, substituted "pension trust fund" for "account in the agency fund".

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

Teachers' retirement — method of financing, 19-4-601.

Judges' retirement — payments into fund, 19-5-401.

Sheriffs' retirement — sources of money in account, 19-7-402.

Game wardens' retirement — contributions to retirement account, 19-8-501.

Firefighters' retirement — contributions to fund, 19-11-501.

19-6-402. Member's contribution. Every member shall be required to contribute into the account a sum equal to 6 ½% of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974; R.C.M. 1947, 31-209.

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Sheriffs' retirement — members' contributions deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contribution, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

Employer to furnish itemized statement of deduction, 39-3-101.

19-6-403. Refund of member's contribution. Where a member resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 17, Ch. 37, L. 1945; amd. Sec. 2, Ch. 109, L. 1947; amd. Sec. 10, Ch. 243, L. 1955; R.C.M. 1947, 31-217; amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Sheriffs' retirement — discharge or voluntary resignation prior to eligibility for retirement, 19-7-304.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-6-404. State's contribution. The state of Montana shall annually contribute to the account an amount equal to 16.57% of the salaries paid to the highway patrolmen who are covered by this account from the general fund.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974; amd. Sec. 1, Ch. 350, L. 1975; R.C.M. 1947, 31-210; amd. Sec. 1, Ch. 226, L. 1979; amd. Sec. 12, Ch. 549, L. 1981.

Compiler's Comments

1981 Amendment: Changed state's contribution from 16% to 16.57%.

Cross-References

PERS — employer contribution rates — actuarial determination, 19-3-801.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by the state, 19-5-404.

Sheriffs' retirement — counties' contribution, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — state contribution, 19-9-702.

Police retirement — local funds — city's contribution to fund, 19-10-301.

Firefighters' unified retirement — state contribution, 19-13-604.

Drivers' license fees — disposition, 61-5-111.

19-6-405. Investment of retirement account. When there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of $25,000, the excess will be invested by the board of investments as part of the long-term investment fund and any of the account less than $25,000 in amount shall be invested by the board of investments as part of the short-term investment fund when so directed by the board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part).

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Authority to invest funds in obligations of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investment, 17-6-211.

PERS — investment of fund, 19-3-602.

Teachers' retirement — financial administration of money, 19-4-501.

Judges' retirement — limit on use of fund, 19-5-405.

Sheriffs' retirement — investment of account, 19-7-405.

Game wardens' retirement — investment of account, 19-8-403.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Police retirement — local funds — investment of fund, 19-10-203.

Firefighters' retirement — investment of fund by trustees, 19-11-402.

Firefighters' retirement — investment of fund by Board of Investments, 19-11-403.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-6-406. Restrictions on use of assets. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(2).

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Teachers' retirement — restrictions on use of money, 19-4-502.

Judges' retirement — limit on use of fund, 19-5-405.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Police retirement — local funds — limit on use of fund, 19-10-202.

Firefighters' retirement — use of disability and pension fund, 19-11-203.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-6-407. Transfer of dormant savings accounts. The department may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of 10 years. However, no right of the member shall be jeopardized by the transfer, and the savings account shall be transferred to the member's name upon subsequent reentry to membership.

History: En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974; R.C.M. 1947, 31-230.

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Judges' retirement — transfer of dormant savings account, 19-5-406.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Game wardens' retirement — transfer of dormant accounts, 19-8-405.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

19-6-408. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(3).

Cross-References

PERS — vesting of retirement allowances upon termination of system, 19-3-606.

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-4-504.

Judges' retirement — vesting of retirement allowances upon termination of system, 19-5-407.

Sheriffs' retirement — vesting of retirement allowances upon termination of system, 19-7-408.

Game wardens' retirement — vesting of retirement allowances upon termination of system, 19-8-406.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

Part 5

Service Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-6-501. Eligibility and application for service retirement allowance — commencement of allowance. (1) A member in service who has completed at least 20 years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time he desires to be retired, not less than 30 days or more than 90 days subsequent to the filing thereof.

(2) The retirement allowance must commence on the first day of the month following the member's last day of covered employment.

History: En. Sec 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974; R.C.M. 1947, 31-211; amd. Sec. 2, Ch. 206, L. 1981; amd. Sec. 2, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

1981 Amendment: In (1), reduced the minimum creditable service requirement for retirement on a service retirement allowance from 25 years to 20 years.

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — statewide plan — application for service retirement, 19-9-803.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Volunteer Firefighters' Compensation Act — procedure for claiming pension benefits, 19-12-403.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

Firefighters' unified retirement — application for service retirement, 19-13-703.

19-6-502. Service retirement allowance. (1) Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity.

(2) The service retirement allowance shall be computed as follows:

(a) 20 through 25 years, 2% of his final salary for each year of service;

(b) over 25 years, 2% of his final salary for each year of service through the 25th plus 1% of his final salary for each year of service past 25.

History: **En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974; amd. Sec. 5, Ch. 65, L. 1977; R.C.M. 1947, 31-213.**

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-6-503. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the department, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity based on a retirement age of 60.

History: **En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955; amd. Sec. 6, Ch. 65, L. 1977; R.C.M. 1947, 31-215; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 206, L. 1981.**

Compiler's Comments

1981 Amendment: Added "based on a retirement age of 60" at the end of (2).

Cross-References

PERS — early retirement allowance, 19-3-906.

Teachers' retirement — early retirement, 19-4-802.

Judges' retirement — involuntary retirement allowance, 19-5-503.

Sheriffs' retirement — involuntary retirement allowance, 19-7-504.

Game wardens' retirement — involuntary retirement allowance, 19-8-604.

Police retirement — statewide plan — termination of employment prior to retirement, 19-9-304.

Firefighters' retirement — partial service pension, 19-11-603.

Firefighters' unified retirement — mandatory retirement, 19-13-702.

19-6-504. Compulsory retirement allowance. Any member, regardless of his years of service, who has attained the age of 60 years shall forthwith be retired. If he shall have served 25 years or more, he shall receive the full retirement allowance as provided herein. If he shall have served less than 25 years, he shall be entitled to the same options as provided in 19-6-503.

History: **En. Sec. 16, Ch. 37, L. 1945; amd. Sec. 9, Ch. 243, L. 1955; R.C.M. 1947, 31-216.**

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Firefighters' unified retirement — mandatory retirement, 19-13-702.

Discrimination in employment, 49-2-303.

Part 6

Disability Retirement and Death Benefits

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-6-601. Disability retirement allowance. In case of the total disability of a member, permanent in character, regardless of the length of service of the member, a disability retirement allowance shall be granted the member in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana highway patrol in line of duty, then such patrolman who is totally and permanently disabled shall be retired on total retirement allowance of one-half his average final salary regardless of his length of service.

History: En. Sec. 14, Ch. 37, L. 1945; amd. Sec. 1, Ch. 109, L. 1947; R.C.M. 1947, 31-214; amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of disability retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-6-602. Nomination of beneficiary. Every member may name his beneficiary by written designation, duly acknowledged and filed with the department, and may change the beneficiary in like manner.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974; amd. Sec. 7, Ch. 65, L. 1977; R.C.M. 1947, 31-222; amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

PERS — designation of beneficiary, 19-3-1301.

Judges' retirement — nomination of beneficiary, 19-5-602.

Sheriffs' retirement — designation of beneficiary, 19-7-602.

Game wardens' retirement — nomination of beneficiary, 19-8-702.

19-6-603. Payments upon employment-related death. (1) If the board shall find that a member died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary.

(2) Such retirement allowance shall consist of:

(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the member, less the amount which is paid to any such beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable.

History: En. Sec. 18, Ch. 37, L. 1945; amd. Sec. 11, Ch. 243, L. 1955; R.C.M. 1947, 31-218; amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

PERS — eligibility for death benefits, 19-3-1201.

PERS — amount of death benefit, 19-3-1202.

Teachers' retirement — allowances for death of member, 19-4-1001.

Judges' retirement — payments upon employment-related death, 19-5-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Volunteer Firefighters' Compensation Act — death benefit, 19-12-505.

Firefighters' unified retirement — payment of service or disability allowance upon death of member, 19-13-901.

Workers' compensation, Title 39, ch. 71.

19-6-604. Payments upon death from other causes. (1) If the retired patrolman dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-6-503.

History: En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955; R.C.M. 1947, 31-219.

Cross-References

PERS — eligibility for death benefits, 19-3-1201.

PERS — amount of death benefit, 19-3-1202.

Teachers' retirement — payments upon death of retiree, 19-4-1002.

Judges' retirement — payments in case of death from other causes, 19-5-604.

Sheriffs' retirement — payments in case of death after retirement, 19-7-603.

Game wardens' retirement — payments upon death from other causes, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Volunteer Firefighters' Compensation Act — payment of disability and death benefits, 19-12-506.

Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-6-605 through 19-6-610 reserved.

19-6-611. Determination by board. The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

History: En. Sec. 3, Ch. 597, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

Administrative hearing, 2-4-612.

PERS — disability — determination by Board, 19-3-1003.

Teachers' retirement— eligibility for disability retirement, 19-4-901.

Judges' retirement — disability — determination by Board, 19-5-611.

Sheriffs' retirement — disability — determination by Board, 19-7-611.

Game wardens' retirement — disability — determination by Board, 19-8-711.

Police retirement — statewide plan — Board's determination of disability, 19-9-901.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — Board's determination of disability, 19-13-801.

Depositions, Rules 30 and 31, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

19-6-612. Medical examination of disability retiree — cancellation of allowance. (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

(2) A person whose retirement allowance is canceled because he is no longer incapacitated shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) The department of justice may request a medical or psychological review as to the ability of the member to return to work as a member of the highway patrol. If the board's findings are upheld, the department shall pay the cost of the review.

History: En. Sec. 4, Ch. 597, L. 1981.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — disability — reinstatement upon termination of allowance, 19-9-905.

Volunteer Firefighters' Compensation Act — medical review of certain disability retirees, 19-12-408.

Volunteer Firefighters' Compensation Act — cancellation and reinstatement of certain pensions, 19-12-409.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Part 7

Benefits in General

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-6-701. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the department, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the department at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the department at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. 31-228 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 13, Ch. 326, L. 1974; amd. Sec. 9, Ch. 65, L. 1977; R.C.M. 1947, 31-228.

Cross-References

PERS — optional retirement allowance, 19-3-1101.

Teachers' retirement — optional allowances, 19-4-702.

Judges' retirement — optional retirement allowance, 19-5-701.

Sheriffs' retirement — optional retirement allowance, 19-7-701.

Game wardens' retirement — optional retirement allowance, 19-8-801.

19-6-702. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in equal monthly installments and may not be increased, decreased, revoked, or repealed unless by act of the legislature of the state of Montana.

History: En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; R.C.M. 1947, 31-220(part).

Cross-References

PERS — frequency of allowance payments, 19-3-1402.

Teachers' retirement — payments to be monthly, 19-4-703.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Police retirement — statewide plan — retirement allowances to be monthly and fixed, 19-9-1002.

Firefighters' unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-6-703. Board's authority to refuse payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a member to be retired or where the death of a member is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke, or suspend, for as long a time as it sees fit, disbursement of the state annuity.

History: En. Sec. 25, Ch. 37, L. 1945; R.C.M. 1947, 31-225; amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

Sheriffs' retirement — Board's authority to refuse to make payments, 19-7-703.

Game wardens' retirement — Board's authority to refuse to make payments, 19-8-803.

Police retirement — statewide plan — Board's authority to refuse to make payments, 19-9-1004.

19-6-704. Correction of erroneous payments. Should a change in records fraudulently made or a mistake in records inadvertently made result in a member or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of the error, the department shall correct the error and shall adjust the payments which shall be made to the member or annuitant in a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(b); amd. Sec. 7, Ch. 114, L. 1979.

Cross-References

PERS — adjustment of errors in payments, 19-3-1403.

Teachers' retirement — correction of erroneous payments, 19-4-705.

Judges' retirement — correction of erroneous payments, 19-5-703.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Game wardens' retirement — correction of erroneous payments, 19-8-804.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-6-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-6-706.

History: En. Sec. 21, Ch. 37, L. 1945; amd. Sec. 3, Ch. 214, L. 1977; R.C.M. 1947, 31-221.

Cross-References

Benefits tax exempt, 15-30-111.

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

Garnishment — earnings of judgment debtor, 25-13-614.

Prejudgment attachment, Title 27, ch. 18.

19-6-706. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 31-221.1 by Sec. 4, Ch. 214, L. 1977; R.C.M. 1947, 31-221.1.**

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Judges' retirement — withholding of group insurance premium from retirement benefit, 19-5-705.

Sheriffs' retirement — withholding of group insurance premium from retirement benefit, 19-7-706.

Game wardens' retirement — withholding of group insurance premium from retirement benefit, 19-8-806.

Police retirement — statewide plan — withholding of group insurance premium from retirement benefit, 19-9-1008.

Police retirement — local funds — withholding of group insurance premium from retirement benefit, 19-10-505.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

CHAPTER 7

SHERIFFS' RETIREMENT

Part 1 — General Provisions

Section

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19-7-503. Service retirement allowance.
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19-7-605 through 19-7-610 reserved.
19-7-611. Determination by board.
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19-7-701. Optional retirement allowance.
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19-7-703. Board's authority to refuse to make payments.
19-7-704. Correction of erroneous payments.
19-7-705. Exemption from taxes and legal process.
19-7-706. Withholding of group insurance premium from retirement benefit.

Chapter Cross-References

Sheriffs' Department, Title 7, ch. 32, part 21.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the sheriffs' retirement board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

(5) "Board" means the sheriffs' retirement board. The board shall consist of five persons who shall be the same persons that comprise the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member" means any person who has accumulated deductions in the account to his credit.

(9) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(10) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(11) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(12) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "Service" means employment as a sheriff.

(15) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(16) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(17) "Vested retirement" means a retirement not for cause and before retirement age.

History: **Ap. p. Sec. 2, Ch. 178, L. 1974; amd. Sec. 1, Ch. 59, L. 1977; amd. Sec. 17, Ch. 332, L. 1977; Sec. 68-2602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; Sec. 68-2603, R.C.M. 1947; R.C.M. 1947, 68-2602, 68-2603; amd. Sec. 8, Ch. 114, L. 1979; amd. Sec. 9, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted "retirement pension trust fund" for "retirement account".

Cross-References

Public Employees' Retirement Board, 2-15-1009.

19-7-102. Sheriffs' retirement system established. A retirement system is established for Montana sheriffs, which shall be known as the "sheriffs' retirement system". It will be an actuarial reserve system for the payment of death, disability, and retirement benefits to sheriffs and to the beneficiaries of the sheriffs to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty.

History: **En. 68-2601 by Sec. 1, Ch. 178, L. 1974; R.C.M. 1947, 68-2601.**

19-7-103. Payments under workers' compensation. All payments provided for in this chapter, except as provided in 19-7-604, are in addition to any other benefits now or hereafter provided for under the Workers' Compensation Act of the state of Montana.

History: **En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625.**

Cross-References

Workers' compensation, Title 39, ch. 71.

19-7-104. Penalty for fraud. (1) No person shall knowingly make any false statement or permit to be falsified any record or records of this retirement system in an attempt to defraud the system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both.

History: **En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(1), (3).**

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 2

Administration

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — statewide plan — administration of plan, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-7-201. Functions of the board. (1) The board is the trustee of all moneys collected for the retirement system and is charged with the proper administration, operation, and enforcement of this chapter. It may establish such rules as it considers necessary.

(2) The board shall prescribe the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

(3) It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and the beneficiaries of the account and shall adopt one or more mortality tables.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(1).

Cross-References

Public Employees' Retirement Board, 2-15-1009.

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — administration by Teachers' Retirement Board, 19-4-201.

Judges' retirement — powers and duties of Board, 19-5-201.

Highway patrol retirement — Board to make rules, 19-6-201.

Game wardens' retirement — Board to make rules, 19-8-201.

Police retirement — statewide plan — powers and duties of Board, 19-9-201.

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Firefighters' retirement — Board of Trustees of association, 19-11-104.

Volunteer Firefighters' Compensation Act — administration of chapter, 19-12-201.

Firefighters' unified retirement — power and duties of Board, 19-13-202.

19-7-202. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the account.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the account to the public employees' retirement system pension trust fund.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 3, Ch. 235, L. 1981; amd. Sec. 15, Ch. 79, L. 1983; amd. Sec. 10, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendments: Both Ch. 79 and 282 changed "fund" to "account" at end of (1) and in (2), after "from the". In addition, Ch. 282, at end of section, substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Substituted "may" for "shall" near the end of (1); substituted "from the fund" for "by the state of Montana" at the end of (1); added subsection (2).

Cross-References

Fund structure, 17-2-102.

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Judges' retirement — administrative expenses, 19-5-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Game wardens' retirement — expenses of administration, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Firefighters' unified retirement — administrative expenses, 19-13-204.

Part 3

Membership and Credit for Service

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-7-301. Membership. Every sheriff is required to become a member of the sheriffs' retirement system on July 1, 1974, unless he was previously a member of the public employees' retirement system, in which case he may at his option become a member of the sheriffs' retirement system. All sheriffs who become members of the sheriffs' retirement system must remain members so long as actively employed in such capacity.

History: En. 68-2607 by Sec. 7, Ch. 178, L. 1974; amd. Sec. 3, Ch. 59, L. 1977; R.C.M. 1947, 68-2607(part).

19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, no sheriff is eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs, except as provided in 19-7-301.

(2) No provision of this chapter is to be construed as to deny any sheriff any benefits accrued under provisions of the public employees' retirement system prior to July 1, 1974.

History: En. 68-2628 by Sec. 28, Ch. 178, L. 1974; amd. Sec. 12, Ch. 59, L. 1977; R.C.M. 1947, 68-2628.

Cross-References

PERS — membership, Title 19, ch. 3, part 4.

19-7-303. Military service. (1) A member now on active duty in or hereafter inducted into the armed forces of the United States has the option to:

(a) continue payments into the account; or

(b) allow the board to make the payments during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to his former status as a sheriff.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service as a sheriff.

History: En. 68-2622 by Sec. 22, Ch. 178, L. 1974; amd. Sec. 9, Ch. 59, L. 1977; R.C.M. 1947, 68-2622.

Cross-References

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — absence in military service, 19-3-502.

PERS — election to qualify military service for full credit, 19-3-503.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — military service, 19-6-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — local funds — credit for military service, 19-10-405.

Firefighters' unified retirement — military service, 19-13-402.

19-7-304. Discharge or voluntary resignation prior to eligibility for retirement. When, before becoming entitled to the retirement allowance, a member resigns of his own volition or is discharged for cause other than incompetence, malfeasance in office, or unlawful conduct, he must:

(1) notify the board of his termination of eligibility and withdraw accumulated contributions standing to his credit at the time of his termination of eligibility; or

(2) notify the board of his termination of current eligibility but request that accumulated contributions standing to his credit be retained by the board for a period of time not to exceed 1 year pending reestablishment of eligibility.

History: **En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(1).**

Cross-References

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Game wardens' retirement — involuntary retirement allowance, 19-8-604.

19-7-305. Discharge for cause prior to eligibility for retirement. A member discharged for incompetence, malfeasance in office, or unlawful conduct prior to becoming entitled to a retirement allowance shall notify the board of the termination of eligibility. The member shall be paid the accumulated contributions standing to the member's credit at the time of termination of eligibility.

History: **En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(2).**

Cross-References

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

19-7-306. Reinstatement after withdrawal of contributions. (1) A member may deposit in the retirement fund, in one sum or in no more than 12 monthly or 24 semimonthly payments, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board.

(2) If a member who is reentering the retirement system after a termination of membership does not elect to make or does not make the redeposit, he must reenter as a new member without credit for any service except the prior service credited before the termination. If a member does make the redeposit, his membership is continuous and unbroken by the last termination.

(3) Regardless of whether the redeposit is made, the documents held by the retirement system, as executed by the member prior to termination of membership, shall be held by the system for the same purposes as prior to the termination and beneficiaries nominated shall remain unchanged.

History: En. 68-2616 by Sec. 16, Ch. 178, L. 1974; amd. Sec. 6, Ch. 59, L. 1977; R.C.M. 1947, 68-2616.

Cross-References

PERS — reinstatement after withdrawal of contributions, 19-3-704.

Police retirement — statewide plan — redeposit of amounts withdrawn upon reinstatement, 19-9-603.

Firefighters' unified retirement — redeposit of amounts withdrawn upon reinstatement, 19-13-603.

19-7-307. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

Cross-References

PERS — no duplication of allowance when there is more than one period of service, 19-3-508.

Teachers' retirement — no duplication of benefits when there is more than one period of service, 19-4-407.

Game wardens' retirement — no duplication of benefits when there is more than one period of service, 19-8-305.

19-7-308. Service under municipal police officers' retirement system prior to or following city-county consolidation. (1) A law enforcement officer who has not changed his employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if his combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which he last made contributions. A sheriff who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue his election. However, credit for service in the PERS which has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for disability retirement, death benefits, and a refund of contributions is governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of an officer described in subsection (1) shall be calculated separately for each system based on the service credited under each system. The final salary or final average salary for each calculation shall be based on the highest salary earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. The combined benefit may not exceed 60% of the final salary or final average salary.

History: En. Sec. 1, Ch. 122, L. 1979.

Cross-References

Police retirement — statewide plan — transfer of assets and liabilities from prior plans, 19-9-105.

19-7-309. Qualification of service from other Montana public retirement systems. (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, firefighters' unified, game wardens', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-7-201(2) upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: **En. Sec. 3, Ch. 145, L. 1981; amd. Sec. 3, Ch. 331, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence of (1)(a) inserted firefighters' unified retirement system; inserted (2).

Cross-References

Highway patrol retirement — qualification of service from other Montana public retirement systems, 19-6-305.

Game wardens' retirement — qualification of service from other Montana public retirement systems, 19-8-306.

Police retirement — statewide plan — qualification of service from other Montana public retirement systems, 19-9-405.

Part 4

Sheriffs' Retirement Account — Contributions

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-7-401. Creation and management of sheriffs' retirement account. A sheriffs' retirement account is created within the public employees' retirement system. All moneys received under this chapter shall be credited to this account. The state treasurer shall be the custodian of the account and will respond to the exclusive administrative control of the board.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

Cross-References

Fiscal duties of State Treasurer, 17-1-111.

PERS — administration of retirement system, Title 19, ch. 3, part 3.

19-7-402. Sources of money in the account. The following money shall be paid to the board, which shall credit such payments to the sheriffs' retirement system account:

(1) all accumulated deductions paid into the public employees' retirement system by any sheriff during any period of prior service, as defined in this chapter; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city;

(3) all contributions by the various counties as required by this chapter;

(4) all contributions by sheriffs as defined in this chapter;

(5) all interest on and increase of the investments and moneys under this chapter;

(6) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178, L. 1974; R.C.M. 1947, 68-2606.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Authority to invest funds in obligations of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

19-7-403. Members' contributions deducted. Every member shall be required to contribute into the account 7% of his monthly salary, which shall be deducted from his salary and deposited to his credit in the account.

History: En. 68-2608 by Sec. 8, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part).

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

Employer to furnish itemized statement of deductions, 39-3-101.

19-7-404. Counties' contributions. (1) The various counties of Montana shall pay monthly 7.62% of each sheriff's gross salary into the retirement account created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 15, Ch. 549, L. 1981.

Compiler's Comments

1981 Amendment: Changed counties' contribution from 7.55% to 7.62%; and added subsection (2).

19-7-405. Investment of account. Whenever there is over $25,000 on deposit in the account, that amount will be invested by the board of investments as part of the long-term investment fund. Any of the account in an amount of $25,000 or less shall be invested by the board of investments as part of the short-term investment fund when so directed by the sheriffs' retirement board.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Authority to invest funds in obligations of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

PERS — investment of fund, 19-3-602.

Teachers' retirement — financial administration of money, 19-4-501.

Highway patrol retirement — investment of retirement account, 19-6-405.

Game wardens' retirement — investment of account, 19-8-403.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Police retirement — local funds — investment of fund, 19-10-203.

Firefighters' retirement — other municipalities — investment of fund by trustees, 19-11-402.

Firefighters' retirement — other municipalities — investment of fund by Board of Investments, 19-11-403.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-7-406. Restrictions on use of assets. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(2).

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Teachers' retirement — restrictions on use of money, 19-4-502.

Judges' retirement — limit on use of fund, 19-5-405.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Police retirement — local funds — limit on use of fund, 19-10-202.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-7-407. Transfer of dormant accumulated deductions. The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the sheriffs' retirement account if the member's account has been dormant for a period of 10 years. However, no right of the member may be jeopardized by the transfer, and the accumulated deductions must be transferred back to the member's name upon his subsequent reentry into the system.

History: En. 68-2627 by Sec. 27, Ch. 178, L. 1974; amd. Sec. 11, Ch. 59, L. 1977; R.C.M. 1947, 68-2627.

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Judges' retirement — transfer of dormant savings account, 19-5-406.

Highway patrol retirement — transfer of dormant savings account, 19-6-407.

Game wardens' retirement — transfer of dormant accounts, 19-8-405.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

19-7-408. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(3).

Cross-References

PERS — vesting of retirement allowances upon termination of system, 19-3-606.

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-4-504.

Judges' retirement — vesting of retirement allowances upon termination of system, 19-5-407.

Highway patrol retirement — vesting of retirement allowances upon termination of system, 19-6-408.

Game wardens' retirement — vesting of retirement allowances upon termination of system, 19-8-406.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

Part 5

Service Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Police retirement — local funds — eligibility for retirement benefits, Title 19, ch. 10, part 4.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-7-501. Eligibility and application for service retirement — commencement of allowance. (1) A sheriff in service who has completed at least 25 years of service and who has reached the age of 55 years may retire on a service retirement allowance upon written application to the board, submitted not less than 30 days or more than 90 days from the desired date of retirement.

(2) Retirement is compulsory for any nonelected sheriff at age 65, except in the case of undersheriffs.

(3) The retirement allowance must commence on the first day of the month following the member's last day of membership service.

History: En. 68-2610 by Sec. 10, Ch. 178, L. 1974; amd. Sec. 4, Ch. 59, L. 1977; R.C.M. 1947, 68-2610; amd. Sec. 3, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: In (1), deleted last sentence, which read: "The application must state the date he desires to be retired."; inserted (3).

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — statewide plan — application for service retirement, 19-9-803.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Volunteer Firefighters' Compensation Act — procedure for claiming pension benefits, 19-12-403.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

Firefighters' unified retirement — application for service retirement, 19-13-703.

19-7-502. Early retirement option. If a member has served 20 years of creditable service as a sheriff and has reached the age of 55 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed 25 years of creditable service or reached age 65, whichever is less.

History: En. 68-2611 by Sec. 11, Ch. 178, L. 1974; R.C.M. 1947, 68-2611; amd. Sec. 9, Ch. 114, L. 1979; amd. Sec. 1, Ch. 105, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "had he not retired" and added "or reached age 65, whichever is less" at the end of the section.

Cross-References

PERS — eligibility for early retirement, 19-3-902.

Teachers' retirement — early retirement, 19-4-802.

19-7-503. Service retirement allowance. (1) The amount of any member's service retirement allowance shall be 2% of his final salary for each year of creditable service, up to a maximum of 50% of final salary.

(2) The member's retirement allowance shall be increased for any member who contributes after 25 years of service by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of 25 years of service.

History: En. 68-2608, 68-2612 by Secs. 8, 12, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part), 68-2612; amd. Sec. 10, Ch. 114, L. 1979.

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-7-504. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) the full amount of his accumulated deductions; or

(2) a retirement allowance beginning on his 55th birthday, calculated under the provisions of 19-7-502.

History: En. 68-2614 by Sec. 14, Ch. 178, L. 1974; amd. Sec. 5, Ch. 59, L. 1977; R.C.M. 1947, 68-2614; amd. Sec. 2, Ch. 105, L. 1981.

Compiler's Comments

1981 Amendment: Substituted clause in (2) for "a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity".

Cross-References

Judges' retirement — involuntary retirement allowance, 19-5-503.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Game wardens' retirement — involuntary retirement allowance, 19-8-604.

Firefighters' unified retirement — mandatory retirement, 19-13-702.

Part 6

Disability Retirement and Death Benefits

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-7-601. Disability retirement allowance. (1) In the case of the permanent total disability of the member, regardless of the member's length of service, a disability retirement allowance shall be awarded to the member based on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total permanent disability is a direct result of member's service as a sheriff in the line of duty, then the member shall be awarded an allowance of one-half of his final salary.

(2) "Total disability" means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice.

History: **En. 68-2613 by Sec. 13, Ch. 178, L. 1974; R.C.M. 1947, 68-2613.**

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-7-602. Designation of beneficiary. Every member may name a beneficiary by a written acknowledged designation properly filed with the board and change the beneficiary in like manner. The designation and any changes may be filed with the board up until but not after the time of retirement.

History: **En. 68-2621 by Sec. 21, Ch. 178, L. 1974; amd. Sec. 8, Ch. 59, L. 1977; R.C.M. 1947, 68-2621.**

Cross-References

PERS — designation of beneficiary, 19-3-1301.

Judges' retirement — nomination of beneficiary, 19-5-602.

Highway patrol retirement — nomination of beneficiary, 19-6-602.

Game wardens' retirement — nomination of beneficiary, 19-8-702.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Volunteer Firefighters' Compensation Act — pension benefits to surviving spouse or children, 19-12-405.

19-7-603. Payments in case of death after retirement. If a member dies before receiving in payments the amount of the accumulated deductions standing to his credit at the time of retirement, the balance shall be paid to the beneficiary.

History: **En. 68-2617 by Sec. 17, Ch. 178, L. 1974; R.C.M. 1947, 68-2617.**

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — payments upon death of retiree, 19-4-1002.

Judges' retirement — payments in case of death from other causes, 19-5-604.

Highway patrol retirement — payments upon death from other causes, 19-6-604.

Game wardens' retirement — payments upon death from other causes, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Volunteer Firefighters' Compensation Act — death benefit, 19-12-505.

Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-7-604. Payments in case of death before retirement. (1) If a member dies before retirement, his beneficiary is entitled to elect one of the following options for which the member qualified and the beneficiary qualifies:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) a retirement allowance based on 2% of the final salary for each year of service up to a maximum of 25 years, reduced actuarially from age 65;

(c) a retirement allowance based on one-half of final salary, reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation, if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board.

History: En. 68-2618 by Sec. 18, Ch. 178, L. 1974; amd. Sec. 7, Ch. 59, L. 1977; amd. Sec. 1, Ch. 93, L. 1977; R.C.M. 1947, 68-2618; amd. Sec. 3, Ch. 105, L. 1981.

Compiler's Comments

1981 Amendment: In (1)(b), combined options for members not eligible to retire and members eligible to retire and substituted "reduced actuarially from age 65" for provisions in retirement allowance calculation relating to eligibility and actuarial equivalents; in (1)(c), combined the option for beneficiary who is other than surviving spouse or minor child and the option for beneficiary who is surviving spouse or minor child; changed "less the amount paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable" to "reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation" in the retirement allowance calculation in (1)(c) that applied to both; deleted option of $100 per month per surviving minor child of the deceased member up to a maximum of $300 per month; deleted subsection (2) that granted that same benefit if beneficiary is not surviving spouse; deleted subsection (3) that established period of benefit (no longer than the time it would have taken the deceased member to reach the age of 65 years or more than 15 years, whichever is greater); and added subsection (2).

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — allowances for death of member, 19-4-1001.

Judges' retirement — payments upon employment-related death, 19-5-603.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Volunteer Firefighters' Compensation Act — death benefit, 19-12-505.

Firefighters' unified retirement — payment of service or disability allowance upon death of member, 19-13-901.

19-7-605 through 19-7-610 reserved.

19-7-611. Determination by board. The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

History: En. Sec. 5, Ch. 597, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

Administrative hearing, 2-4-612.

PERS — disability — determination by Board, 19-3-1003.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Judges' retirement — disability — determination by Board, 19-5-611.

Highway patrol retirement — disability — determination by Board, 19-6-611.

Game wardens' retirement — determination by Board, 19-8-711.

Police retirement — statewide plan — Board's determination of disability, 19-9-901.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — Board's determination of disability, 19-13-801.

Depositions, Rules 30 and 31, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

19-7-612. Medical examination of disability retiree — cancellation of allowance. (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

(2) A person other than an elected official whose retirement allowance is canceled because he is no longer incapacitated shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review.

History: En. Sec. 6, Ch. 597, L. 1981.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — disability — reinstatement upon termination of allowance, 19-9-905.

Volunteer Firefighters' Compensation Act — medical review of certain disability retirees, 19-12-408.

Volunteer Firefighters' Compensation Act — cancellation and reinstatement of certain pensions, 19-12-409.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Part 7

Benefits in General

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-7-701. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 2—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. 68-2626 by Sec. 26, Ch. 178, L. 1974; amd. Sec. 10, Ch. 59, L. 1977; R.C.M. 1947, 68-2626.

Cross-References

PERS — optional retirement allowance, 19-3-1101.

Teachers' retirement — optional allowances, 19-4-702.

Judges' retirement — optional retirement allowance, 19-5-701.

Highway patrol retirement — optional retirement allowance, 19-6-701.

Game wardens' retirement — optional retirement allowance, 19-8-801.

19-7-702. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in monthly annuities and shall not be increased, decreased, revoked, or repealed unless by an act of the legislature of the state of Montana.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

Cross-References

PERS — frequency of allowance payments, 19-3-1402.

Teachers' retirement — payments to be monthly, 19-4-703.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Police retirement — statewide plan — retirement allowances to be monthly and fixed, 19-9-1002.

Firefighters unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-7-703. Board's authority to refuse to make payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend disbursement of the state annuity, in its discretion, for as long a time as it deems necessary. Where the illness or injury causing a member to retire, or where the death of a member or a member to be retired, is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke, or suspend disbursement of the state annuity for as long as, in its discretion, it deems necessary.

History: En. 68-2624 by Sec. 24, Ch. 178, L. 1974; R.C.M. 1947, 68-2624.

Cross-References

PERS — powers and duties of Board, 19-3-304.

Highway patrol retirement — Board's authority to refuse to make payments, 19-6-703.

Game wardens' retirement — Board's authority to refuse to make payments, 19-8-803.

Police retirement — statewide plan — Board's authority to refuse to make payments, 19-9-1004.

19-7-704. Correction of erroneous payments. Should any change in records fraudulently made or any mistake in records inadvertently made result in any member or beneficiary receiving more or less than the person would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the member or annuitant in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

History: En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(2).

Cross-References

PERS — adjustment of errors in payments, 19-3-1403.

Teachers' retirement — correction of erroneous payments, 19-4-705.

Judges' retirement — correction of erroneous payments, 19-5-703.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Game wardens' retirement — correction of erroneous payments, 19-8-804.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-7-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-7-706.

History: En. 68-2620 by Sec. 20, Ch. 178, L. 1974; amd. Sec. 8, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.

Cross-References

Benefits tax exempt, 15-30-111.

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

19-7-706. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2620.1 by Sec. 9, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.1.

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Judges' retirement — withholding of group insurance premium from retirement benefit, 19-5-705.

Highway patrol retirement — withholding of group insurance premium from retirement benefit, 19-6-706.

Game wardens' retirement — withholding of group insurance premium from retirement benefit, 19-8-806.

Police retirement — statewide plan — withholding of group insurance premium from retirement benefit, 19-9-1008.

Police retirement — local funds — withholding of group insurance premium from retirement benefit, 19-10-505.

Volunteer Firefighters' Compensation Act — payments to volunteer fire companies maintaining group insurance, 19-12-103.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

CHAPTER 8

GAME WARDENS' RETIREMENT

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19-8-801. Optional retirement allowance.
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19-8-806. Withholding of group insurance premium from retirement benefit.

Chapter Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Fish and game wardens, Title 87, ch. 1, part 5.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana state game wardens' retirement pension trust fund.

(2) "Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(7) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member's annuity" means payments for life derived from contributions made by the contributor.

(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.

(10) "Retirement allowance" means the state annuity plus the member's annuity.

(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.

(12) "State game warden" means all state fish and game wardens hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks moneys.

History: (1) thru (11)En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974; amd. Sec. 1, Ch. 8, L. 1977; amd. Secs. 1, 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 330, L. 1977; amd. Sec. 4, Ch.

332, L. 1977; Sec. 68-1401, R.C.M. 1947; (12)En. Sec. 2, Ch. 130, L. 1963; amd. Sec. 2, Ch. 8, L. 1977; amd. Sec. 2, Ch. 330, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 68-1402, R.C.M. 1947; R.C.M. 1947, 68-1401, 68-1402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 592, L. 1981; amd. Sec. 11, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Added "or accumulated contributions" to phrases defined in (2); substituted present language in (2) for "means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon"; deleted former subsection (8) defining "involuntary retirement"; deleted former subsection (10) defining "optional retirement age"; deleted former subsection (12) defining "retirement age".

Cross-References

Public Employees' Retirement Board, 2-15-1009.

19-8-102. Retirement system. There is a retirement system known as the Montana state game wardens' retirement system, which is governed by the provisions of this chapter.

History: En. 68-1402.1 by Sec. 3, Ch. 8, L. 1977; R.C.M. 1947, 68-1402.1.

19-8-103. Payments under workers' compensation. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the Workers' Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963; R.C.M. 1947, 68-1426.

Cross-References

Workers' compensation, Title 39, ch. 71.

19-8-104. Penalty for fraud. (1) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 2

Administration

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Police retirement — statewide plan — administration of plan, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-8-201. Board to make rules. The board is charged with the proper administration, operation, and enforcement of this chapter. The board may make such rules as it considers necessary and shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(1).

Cross-References

Public Employees' Retirement Board, 2-15-1009.

Freedom from discrimination, 49-1-102.

Discrimination in employment, 49-2-303.

19-8-202. Board to keep actuarial data. The board shall keep such data as is necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and the beneficiaries and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(2).

Cross-References

PERS — employment of actuary — biennial investigation and valuation, 19-3-305.

Highway patrol retirement — Board to keep actuarial data, 19-6-202.

Police retirement — local funds — actuarial valuation of police retirement fund, 19-10-205.

Firefighters' unified retirement — actuarial valuation, 19-13-504.

19-8-203. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the account.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the account to the public employees' retirement system pension trust fund.

(3) In addition to the amount provided in subsection (2), the board may assess and the department of administration may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering this chapter.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 235, L. 1981; amd. Sec. 12, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: Changed "fund" to "account" in two places; and at end of (2) substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Added subsections (1) and (2); added "In addition to the amount provided in subsection (2)" at the beginning of (3); substituted "may" for "shall" before "collect a fee from the department" in (3); deleted the last sentence of (3) limiting the fee amount.

Cross-References

Department of Administration, 2-15-1001.

Department of Fish, Wildlife, and Parks, Title 2, ch. 15, part 34.

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Judges' retirement — administrative expenses, 19-5-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Firefighters' unified retirement — administrative expenses, 19-13-204.

Part 3

Membership and Credit for Service

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-8-301. Membership. Except as provided in 19-8-302, each state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish, wildlife, and parks moneys and who is assigned to law enforcement in the department of fish, wildlife, and parks shall become a member of the retirement system when first becoming a state game warden. Except as provided in 19-8-302, all state game wardens shall be members of the retirement system so long as actively employed in that capacity.

History: En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; R.C.M. 1947, 68-1407(part); amd. Sec. 2, Ch. 218, L. 1979.

19-8-302. Ineligibility for public employees' retirement system — transfer of membership. (1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens.

(2) A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement in the fish and game department may retain membership in the retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

(3) A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

History: En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977; R.C.M. 1947, 68-1429.

Cross-References
PERS, Title 19, ch. 3.

19-8-303. Credit for prior service. (1) If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this chapter.

(2) A state game warden shall be allowed service credit hereunder for any service prior to July 1, 1963, including other Montana state, county, or city service.

History: (1)En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; Sec. 68-1407, R.C.M. 1947; (2)En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; Sec. 68-1408, R.C.M. 1947; R.C.M. 1947, 68-1407(part), 68-1408(part).

Cross-References
PERS — qualification of prior service not previously credited, 19-3-506.

19-8-304. Military service. (1) A state game warden inducted into the armed forces of the United States has the option to:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden.

(3) A member with 15 years or more of state service qualified under this chapter may, at any time prior to retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this service pursuant to subsections (1) and (2).

(4) To qualify this service he must contribute to the retirement fund the actuarial cost of granting the service determined by the board, based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more years of military service than he has years of creditable state service in excess of 15 years.

History: En. Sec. 22, Ch. 130, L. 1963; amd. Sec. 13, Ch. 8, L. 1977; R.C.M. 1947, 68-1422; (3), (4)En. Sec. 1, Ch. 119, L. 1983.

Cross-References

Reemployment of public employee upon completion of military service, 10-2-221.

PERS — absence in military service, 19-3-502.

PERS — election to qualify military service for full credit, 19-3-503.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — military service, 19-6-303.

Highway patrol retirement — election to qualify military service for full credit, 19-6-304.

Sheriffs' retirement — military service, 19-7-303.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Police retirement — local funds — credit for military service, 19-10-405.

Police retirement — local funds — election to qualify previous military service, 19-10-406.

Firefighters' unified retirement — military service, 19-13-402.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

19-8-305. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: **En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).**

Cross-References

PERS — no duplication of allowance when there is more than one period of service, 19-3-508.

Teachers' retirement — no duplication of benefits when there is more than one period of service, 19-4-407.

Sheriffs' retirement — no duplication of benefits when there is more than one period of service, 19-7-307.

19-8-306. Qualification of service from other Montana public retirement systems. (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, firefighters' unified, sheriffs', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the game wardens' retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the game wardens' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-8-201 upon contribution by the employee of the actuarial cost of granting this service in the game wardens' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: **En. Sec. 4, Ch. 145, L. 1981; amd. Sec. 4, Ch. 331, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence of (1)(a) inserted firefighters' unified retirement system; inserted (2).

Cross-References

Highway patrol retirement — qualification of service from other Montana public retirement systems, 19-6-305.

Sheriffs' retirement — qualification of service from other Montana public retirement systems, 19-7-309.

Police retirement — statewide plan — qualification of service from other Montana public retirement systems, 19-9-405.

19-8-307. Service in the United States government. (1) A state game warden who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify such federal service in the game wardens' retirement system under subsection (2) of this section, provided that:

(a) the warden has accumulated at least 5 years of service in the game wardens' retirement system; and

(b) the warden returns to full-time service covered by the game wardens' retirement system for at least 1 year after completing service in the United States government.

(2) A state game warden who is assigned to an agency of the United States government has the option to:

(a) continue his payments into the account; or

(b) qualify this service by paying an amount equal to the normal employer and employee contributions plus interest within 2 years after his return to active state game warden status.

(3) Salary earned while on assignment to an agency of the United States government must be considered salary for purposes of the game wardens' retirement system and may be included in the determination of final salary as defined in 19-8-101, provided that the final salary cannot exceed 100% of the warden's highest annual salary earned as a state game warden.

History: **En. Sec. 1, Ch. 260, L. 1981.**

Part 4

Creation and Management of Retirement Account

Part Cross-References

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund — all municipalities, Title 19, ch. 11, part 2.

Firefighters' unified retirement — retirement account — creation and management, Title 19, ch. 13, part 5.

19-8-401. Creation of state game wardens' retirement fund. There is a state game wardens' retirement pension trust fund, and all moneys received under the provisions of this chapter shall be credited to that account.

History: **En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; R.C.M. 1947, 68-1408(part); amd. Sec. 13, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "retirement pension trust fund" for "retirement account in the agency fund".

Cross-References

Fund structure, 17-2-102.

19-8-402. Management of account. The board is the trustee of all moneys collected for the retirement system and has exclusive control of the administration of the account. The state treasurer is custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(2).**

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Board of Investments, 2-15-1005.

Fiscal duties of State Treasurer, 17-1-111.

Permissible investments, 17-6-211.

19-8-403. Investment of account. Whenever there is on deposit in the account a sum in excess of $25,000, such excess shall be invested by the board of investments as part of the long-term investment fund. The part of the account not in excess of $25,000 shall be invested by the board of investments as part of the short-term investment fund when so directed by the board.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(3).**

Cross-References

Investment of public funds, Art. III, sec. 13, Mont. Const.

Authority to invest funds in obligations of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

PERS — investment of fund, 19-3-602.

Teachers' retirement — financial administration of money, 19-4-501.

Highway patrol retirement — investment of retirement account, 19-6-405.

Sheriffs' retirement — investment of account, 19-7-405.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Police retirement — local funds — investment of fund, 19-10-203.

Firefighters' retirement — investment of fund by trustees, 19-11-402.

Firefighters' retirement — investment of fund by Board of Investments, 19-11-403.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-8-404. Restrictions on use of assets. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(4).**

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Teachers' retirement — restrictions on use of money, 19-4-502.

Judges' retirement — limit on use of fund, 19-5-405.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Police retirement — local funds — limit on use of fund, 19-10-202.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-8-405. Transfer of dormant accounts. The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement pension trust fund if the member's account has been dormant for a period of 10 years, provided that no right of the member shall be jeopardized by such transfer. The accumulated deductions shall be transferred to the member's name upon subsequent reentry to membership.

History: En. Sec. 28, Ch. 130, L. 1963; R.C.M. 1947, 68-1428; amd. Sec. 14, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: In middle of first sentence, substituted "retirement pension trust fund" for "retirement account in the agency fund".

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Judges' retirement — transfer of dormant savings account, 19-5-406.

Highway patrol retirement — transfer of dormant savings account, 19-6-407.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

19-8-406. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(5).

Cross-References

PERS — vesting of retirement allowances upon termination of system, 19-3-606.

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-4-504.

Judges' retirement — vesting of retirement allowances upon termination of system, 19-5-407.

Highway patrol retirement — vesting of retirement allowances upon termination of system, 19-6-408.

Sheriffs' retirement — vesting of retirement allowances upon termination of system, 19-7-408.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

Part 5

Contributions to Retirement Account

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-8-501. Contributions to the retirement account. The following shall be paid to the board and shall be credited by the board to the account:

(1) all contributions by the state from department of fish, wildlife, and parks moneys;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and moneys in the account.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(1); amd. Sec. 2, Ch. 218, L. 1979.**

19-8-502. Member's contribution. Every member is required to contribute into the account a sum equal to 7% of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account.

History: **En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; R.C.M. 1947, 68-1409(part).**

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — members' contribution deducted, 19-7-403.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

Employer to furnish itemized statement of deductions, 39-3-101.

19-8-503. Refund of member's contribution. Upon termination of the employment of an active member prior to his retirement date, he shall withdraw the amount of his member contributions in lieu of all other benefits under the plan. If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest.

History: **En. Sec. 16, Ch. 130, L. 1963; R.C.M. 1947, 68-1416; amd. Sec. 2, Ch. 592, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted present language of section for all of prior section which read: "When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him."

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — refund of member's contributions, 19-6-403.

Sheriffs' retirement — discharge or voluntary resignation prior to eligibility for retirement, 19-7-304.

Sheriffs' retirement — discharge for cause prior to eligibility for retirement, 19-7-305.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601, all such collections until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 640, L. 1979; amd. Sec. 18, Ch. 549, L. 1981.

Compiler's Comments

1981 Amendment: Changed state's contribution from 7% to 7.15%.

Cross-References

Fiscal duties of State Treasurer, 17-1-111.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — city's contribution to fund, 19-10-301.

Firefighters' unified retirement — state contribution, 19-13-604.

Department of Fish, Wildlife, and Parks — payment of salaries, per diem, and expenses, 87-1-602.

Part 6

Service Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Police retirement — local funds — eligibility for retirement benefits, Title 19, ch. 10, part 4.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-8-601. Time of retirement — commencement of allowance. (1) Any member in service who has completed at least 20 years of creditable service and who has reached the age of 55 years may retire on service retirement allowance upon written application to the board setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired.

(2) Retirement shall be compulsory at age 60.

(3) The retirement allowance must commence on the first day of the month following the member's last day of covered employment.

History: En. Sec. 11, Ch. 130, L. 1963; R.C.M. 1947, 68-1411; amd. Sec. 3, Ch. 592, L. 1981; amd. Sec. 4, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3).

1981 Amendment: Decreased number of years service needed from 25 years to 20 years in (1).

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

19-8-602. Repealed. Sec. 8, Ch. 53, L. 1983.

History: En. Sec. 12, Ch. 130, L. 1963; R.C.M. 1947, 68-1412.

19-8-603. Service retirement allowance. (1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity. The member's annuity is the actuarial equivalent of his accumulated deductions at the time of his retirement. The state annuity is an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half of his final salary with 25 years of service.

(2) The retirement allowance of any member who contributes after 25 years of service shall be increased by an amount which is the actuarial equivalent of an annuity based on the member's contributions and the state contributions made after 25 years of service and standing to the member's credit at the time of his retirement.

History: (1)En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967; amd. Sec. 9, Ch. 8, L. 1977; Sec. 68-1413, R.C.M. 1947; (2)En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; Sec. 68-1409, R.C.M. 1947; R.C.M. 1947, 68-1409(part), 68-1413.

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Police retirement — statewide plan — application for service retirement, 19-9-803.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-8-604. Involuntary retirement allowance. If a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the board, be paid in one of the following ways that he elects:

(1) the full amount of his accumulated deductions; or

(2) a retirement allowance beginning on his 55th birthday calculated under the provisions of 19-8-603.

History: En. Sec. 15, Ch. 130, L. 1963; amd. Sec. 10, Ch. 8, L. 1977; R.C.M. 1947, 68-1415; amd. Sec. 4, Ch. 592, L. 1981; amd. Sec. 5, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "19-8-603" for "19-8-602".

1981 Amendment: Substituted current (2) for a provision allowing an annuity actuarially based upon accumulated deductions plus the present value of the state annuity (for prior version see sec. 10, Ch. 8, L. 1977).

Cross-References

PERS — early retirement allowance, 19-3-906.

Teachers' retirement — early retirement, 19-4-802.

Judges' retirement — involuntary retirement allowance, 19-5-503.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Sheriffs' retirement — involuntary retirement allowance, 19-7-504.

Firefighters' unified retirement — mandatory retirement, 19-13-702.

Part 7

Disability Retirement and Death Benefits

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-8-701. Disability retirement allowance. (1) If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement.

(2) If the total disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the contributor has had over 10 years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half of his final salary.

History: En. Sec. 14, Ch. 130, L. 1963; amd. Sec. 20, Ch. 326, L. 1974; R.C.M. 1947, 68-1414; amd. Sec. 2, Ch. 218, L. 1979.

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Police retirement — statewide plan — amount of disability retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-8-702. Nomination of beneficiary. Each contributor may name his beneficiary by written designation, duly acknowledged and filed with the board, and may change the beneficiary in like manner. The designation and all changes must be filed with the board.

History: En. Sec. 21, Ch. 130, L. 1963; amd. Sec. 12, Ch. 8, L. 1977; amd. Sec. 6, Ch. 330, L. 1977; R.C.M. 1947, 68-1421.

Cross-References
PERS — designation of beneficiary, 19-3-1301.
Judges' retirement — nomination of beneficiary, 19-5-602.
Highway patrol retirement — nomination of beneficiary, 19-6-602.
Sheriffs' retirement — designation of beneficiary, 19-7-602.

19-8-703. Payments upon employment-related death. If the board finds that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary, consisting of:

(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable.

History: En. Sec. 17, Ch. 130, L. 1963; amd. Sec. 11, Ch. 8, L. 1977; amd. Sec. 2, Ch. 578, L. 1977; R.C.M. 1947, 68-1417.

Cross-References
PERS — eligibility for death benefits, 19-3-1201.
Teachers' retirement — allowances for death of member, 19-4-1001.
Judges' retirement — payments upon employment-related death, 19-5-603.
Highway patrol retirement — payments upon employment-related death, 19-6-603.
Sheriffs' retirement — payments in case of death before retirement, 19-7-604.
Police retirement — statewide plan — death benefits, 19-9-911.
Police retirement — local funds — death benefits, 19-10-503.
Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.
Volunteer Firefighters' Compensation Act — death benefits, 19-12-505.
Firefighters' unified retirement — payment of service or disability allowance upon death of member, 19-13-901.

19-8-704. Payments upon death from other causes. (1) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-8-604.

History: En. Sec. 18, Ch. 130, L. 1963; R.C.M. 1947, 68-1418.

Cross-References
PERS — amount of death benefit, 19-3-1202.
Teachers' retirement — payments upon death of retiree, 19-4-1002.
Judges' retirement — payments in case of death from other causes, 19-5-604.
Highway patrol retirement — payments upon death from other causes, 19-6-604.
Sheriffs' retirement — payments in case of death after retirement, 19-7-603.
Police retirement — statewide plan — death benefits, 19-9-911.
Police retirement — local funds — death benefits, 19-10-503.
Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.
Volunteer Firefighters' Compensation Act — death benefits, 19-12-505.
Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-8-705 through 19-8-710 reserved.

19-8-711. Determination by board. The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

History: En. Sec. 7, Ch. 597, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

Administrative hearings, 2-4-612.

PERS — disability — determination by Board, 19-3-1003.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Judges' retirement — disability — determination by Board, 19-5-611.

Highway patrol retirement — disability — determination by Board, 19-6-611.

Sheriffs' retirement — disability — determination by Board, 19-7-611.

Police retirement — statewide plan — Board's determination of disability, 19-9-901.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — Board's determination of disability, 19-13-801.

Depositions, Rules 30 and 31, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

19-8-712. Medical examination of disability retiree — cancellation of allowance. (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

(2) A person whose retirement allowance is canceled because he is no longer incapacitated shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the member to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review.

History: En. Sec. 8, Ch. 597, L. 1981.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Police retirement — statewide plan — disability — reinstatement upon termination of allowance, 19-9-905.

Volunteer Firefighters' Compensation Act — medical review of certain disability retirees, 19-12-408.

Volunteer Firefighters' Compensation Act — cancellation and reinstatement of certain pensions, 19-12-409.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

Part 8

Benefits in General

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-8-801. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963; amd. Sec. 15, Ch. 8, L. 1977; R.C.M. 1947, 68-1427.

Cross-References

PERS — optional retirement allowance, 19-3-1101.

Teachers' retirement — optional allowances, 19-4-702.

Judges' retirement — optional retirement allowance, 19-5-701.

Highway patrol retirement — optional retirement allowance, 19-6-701.

Sheriffs' retirement — optional retirement allowance, 19-7-701.

19-8-802. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in equal monthly installments and may not be increased, decreased, revoked, or repealed unless by act of the legislature.

History: **En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).**

Cross-References

PERS — frequency of allowance payments, 19-3-1402.

Teachers' retirement — payments to be monthly, 19-4-703.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Police retirement — statewide plan — retirement allowances to be monthly and fixed, 19-9-1002.

Firefighters' unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-8-803. Board's authority to refuse to make payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired or the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke, or suspend disbursement of the state annuity for as long a time as it sees fit.

History: **En. Sec. 24, Ch. 130, L. 1963; R.C.M. 1947, 68-1424.**

Cross-References

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — Board to grant benefits, 19-4-206.

Judges' retirement — powers and duties of Board, 19-5-201.

Highway patrol retirement — Board's authority to refuse payments, 19-6-703.

Sheriffs' retirement — Board's authority to refuse to make payments, 19-7-703.

Police retirement — statewide plan — Board's authority to refuse to make payments, 19-9-1004.

19-8-804. Correction of erroneous payments. Should any change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

History: **En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).**

Cross-References

PERS — adjustment of errors in payments, 19-3-1403.

Teachers' retirement — correction of erroneous payments, 19-4-705.

Judges' retirement — correction of erroneous payments, 19-5-703.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-8-805. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-8-806.

History: **En. Sec. 20, Ch. 130, L. 1963; amd. Sec. 5, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.**

Cross-References

Benefits tax exempt, 15-30-111.

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

19-8-806. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 68-1420.1 by Sec. 6, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.1.**

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Judges' retirement — withholding of group insurance premium from retirement benefit, 19-5-705.

Highway patrol retirement — withholding of group insurance premium from retirement benefit, 19-6-706.

Sheriffs' retirement — withholding of group insurance premium from retirement benefit, 19-7-706.

Police retirement — statewide plan — withholding of group insurance premium from retirement benefit, 19-9-1008.

Police retirement — local funds — withholding of group insurance premium from retirement benefit, 19-10-505.

Volunteer Firefighters' Compensation Act — payments to volunteer fire companies maintaining group insurance, 19-12-103.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

CHAPTER 9

POLICE RETIREMENT — STATEWIDE PLAN

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Chapter Cross-References

Municipal police force, Title 7, ch. 32, part 41.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-9-101. Short title. This chapter may be cited as the "Municipal Police Officers' Retirement Act".

History: En. 11-1860 by Sec. 1, Ch. 456, L. 1977; R.C.M. 1947, 11-1860.

19-9-102. Purpose — application of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police retirement funds, the legislature finds and declares that the law regarding such funds, although in conflict with this chapter, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police retirement funds, applies to such cities, other than those of the first and second class, that wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities that wish to adopt it, and any city that has adopted the abovementioned statewide police reserve fund.

(2) The following may not be applied in any way to a city operating under the plan created by this chapter: 7-32-4107, 7-32-4120, 7-32-4131, and chapter 10 of this title.

History: En. 11-1892 by Sec. 33, Ch. 456, L. 1977; R.C.M. 1947, 11-1892; amd. Sec. 11, Ch. 114, L. 1979.

19-9-103. Municipal police officers' retirement system established. A municipal police officers' retirement system is established and shall be governed by the provisions of this chapter.

History: En. 11-1862 by Sec. 3, Ch. 456, L. 1977; R.C.M. 1947, 11-1862.

Cross-References

Police retirement — local funds, Title 19, ch. 10.

19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(6) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(7) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(8) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(9) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.

(10) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(11) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(12) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(15) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(16) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(17) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(18) "Plan" means the municipal police officers' retirement system created by this chapter.

(19) "Police officer" means a law enforcement officer employed by an employer.

(20) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(21) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(22) "Retirement allowance" means the employer annuity plus the member's annuity.

(23) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(24) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(25) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer.

History: (1), (3) thru (15), (17) thru (23)En. 11-1861 by Sec. 2, Ch. 456, L. 1977; Sec. 11-1861, R.C.M. 1947; (16)En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; Sec. 11-1839.1, R.C.M. 1947; R.C.M. 1947, 11-1839.1, 11-1861; amd. Sec. 1, Ch. 457, L. 1979; amd. Sec. 1, Ch. 186, L. 1983; amd. Sec. 15, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 186 inserted (5) and (24).

Chapter 282 changed "agency account" to "pension trust fund" in (9).

19-9-105. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, shall be transferred to the account provided for in 19-9-501. The board shall ascertain the amounts to be apportioned to each account on April 19, 1977, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977.

History: En. 11-1880 by Sec. 21, Ch. 456, L. 1977; R.C.M. 1947, 11-1880.

Cross-References

Sheriffs' retirement — service under Municipal Police Officers' Retirement System prior to or following city-county consolidation, 19-7-308.

19-9-106. Effect on members of prior plans. (1) All provisions of this plan are effective as to a member whose retirement date occurred prior to July 1, 1977, except the amount and mode of payment of such member's retirement allowance will remain unchanged.

(2) This chapter may not decrease the benefits of a member under a prior plan.

History: En. 11-1881 by Sec. 22, Ch. 456, L. 1977; R.C.M. 1947, 11-1881.

19-9-107. Election to join plan — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this chapter. Upon the enactment of such an ordinance, the provisions of this chapter become applicable to the city. Any city enacting such an ordinance shall send a certified copy thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by it in its local police reserve or retirement fund. The value of the securities shall be determined by the board.

(2) The trustees or other administrative head of the local system as of the effective date of the election shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions for a period determined by the administrator. Any excess of employer charges over credits under this section are payable by the employer, with interest, for a period of 10 years or less as determined by the administrator.

History: En. 11-1885 by Sec. 26, Ch. 456, L. 1977; R.C.M. 1947, 11-1885; amd. Sec. 1, Ch. 375, L. 1979; amd. Sec. 1, Ch. 286, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "for a period determined by the administrator" at end of third sentence and changed the basis for payments under the last sentence from "on a basis determined by the procedure described in 19-9-503(2) and (3)" to "for a period of 10 years or less as determined by the administrator".

19-9-108. Penalty for fraud. (1) No person may knowingly make any false statement or permit to be falsified any records of the plan in an attempt to defraud the plan.

(2) A person who violates any of the provisions of subsection (1) is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a term not exceeding 6 months, or both.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(1), (3).

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 2

Administration of Plan

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund — all municipalities, Title 19, ch. 11, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-9-201. Powers and duties of board. (1) The board is authorized to administer, interpret, and enforce the provisions of this chapter.

(2) The board shall establish such uniform rules as are necessary to administer the provisions of this chapter. The board is the sole authority under this chapter as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for retirement and disability under this chapter.

History: **En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(1), (2).**

Cross-References

Authority to invest funds in obligation of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — administration by Teachers' Retirement Board, 19-4-201.

Judges' retirement — powers and duties of Board, 19-5-201.

Highway patrol retirement — Board to make rules, 19-6-201.

Sheriffs' retirement — functions of the Board, 19-7-201.

Game wardens' retirement — Board to make rules, 19-8-201.

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Firefighters' retirement — management of fund, 19-11-201.

Volunteer Firefighters' Compensation Act — administration of chapter, 19-12-201.

Firefighters' unified retirement — power and duties of Board, 19-13-202.

19-9-202. Department to provide forms — information from employers. The department of administration shall prepare such forms as it finds necessary for the employers to complete to provide all the information necessary to administer this chapter, and the cities shall give the department of administration all data necessary to carry out the purpose and intent hereof.

History: **En. 11-1891 by Sec. 32, Ch. 456, L. 1977; R.C.M. 1947, 11-1891.**

Cross-References

Department of Administration, 2-15-1001.

Firefighters' unified retirement — Department to provide forms — information from employers, 19-13-203.

19-9-203. Administrative expenses. (1) The expense of administration of this chapter, exclusive of amounts required to be paid as benefits to or on behalf of a member, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system pension trust fund.

History: En. 11-1883 by Sec. 24, Ch. 456, L. 1977; R.C.M. 1947, 11-1883; amd. Sec. 5, Ch. 235, L. 1981; amd. Sec. 16, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Substituted "may" for "shall" near the end of (1); substituted "paid from the fund" for "borne by the state and shall be in addition to the amounts required of it as contributions" at the end of (1); added subsection (2).

Cross-References

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Judges' retirement — administrative expenses, 19-5-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — expenses of administration, 19-8-203.

Firefighters' unified retirement — administrative expenses, 19-13-204.

Part 3

Membership

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

19-9-301. Active membership. (1) A police officer becomes an active member under the plan:

(a) on the date his employment by an employer commences;

(b) on July 1, 1977, if he is employed by an employer on that date; or

(c) in the case of an employer which elects to join the plan as provided in 19-9-107, on the effective date of such election if he is employed by the employer on that date.

(2) Upon becoming eligible for membership, he shall complete such forms and furnish such proof as may be required by the board.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(1), (2).

Cross-References

Prohibition on participation in certain pension and retirement systems, 7-32-202.

19-9-302. Ineligibility for other retirement plans. No active member is eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on his behalf, except the Social Security Act, while he is eligible to be covered by this plan.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(3).

Cross-References

Prohibition on participation in certain pension and retirement systems, 7-32-202.

Social security — plans for employees of political subdivisions, Title 19, ch. 1, part 5.

Employer to furnish itemized statement of deductions, 39-3-101.

19-9-303. Inactive membership. (1) An active member becomes an inactive member upon the occurrence of the earlier of the following:

(a) the date he ceases to be employed by an employer and becomes entitled to a retirement allowance;

(b) the date of commencement of an approved absence from active duty with an employer of a substantial duration.

(2) An inactive member becomes an active member on the day he returns to active duty with an employer. Upon again becoming an active member, his retirement allowance, if any, shall cease being paid to him until he again becomes an inactive member.

History: En. 11-1864 by Sec. 5, Ch. 456, L. 1977; R.C.M. 1947, 11-1864.

Cross-References

Discontinuation of salary when retirement allowance granted, 7-32-4135.

Teachers' retirement — inactive membership, 19-4-303.

Firefighters' unified retirement — inactive membership, 19-13-303.

19-9-304. Termination of employment prior to retirement. Upon termination of the employment of an active member prior to his retirement date, he shall withdraw the amount of his member contributions in lieu of all other benefits under the plan. If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 19-9-911.

History: En. 11-1873 by Sec. 14, Ch. 456, L. 1977; R.C.M. 1947, 11-1873.

Cross-References

PERS — termination of membership, 19-3-406.

Firefighters' unified retirement — termination of employment prior to retirement, 19-13-304.

19-9-305. Cessation of membership. A member shall cease to be a member upon the occurrence of the earlier of the following:

(1) the date he withdraws his member contributions in lieu of all other benefits under the plan;

(2) the date of his death.

History: En. 11-1865 by Sec. 6, Ch. 456, L. 1977; R.C.M. 1947, 11-1865.

Cross-References

Firefighters' unified retirement — cessation of membership, 19-13-305.

Part 4

Credited Service

Part Cross-References

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-9-401. Credited service to be cumulative. A member is entitled to benefits based upon the entire period of his credited service and final average salary without regard to the number of employers by whom he was employed or the number of periods of his employment so that no duplication of credited service occurs.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(4).

Cross-References

PERS — no duplication of allowance when there is more than one period of service, 19-3-508.

Teachers' retirement — no duplication of benefits when there is more than one period of service, 19-4-407.

Sheriffs' retirement — no duplication of benefits when there is more than one period of service, 19-7-307.

Game wardens' retirement — no duplication of benefits when there is more than one period of service, 19-8-305.

Firefighters' unified retirement — credited service to be cumulative, 19-13-401.

19-9-402. Military service. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part).

Cross-References

PERS — absence in military service, 19-3-502.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — military service, 19-6-303.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — local funds — credit for military service, 19-10-405.

Firefighters' unified retirement — military service, 19-13-402.

19-9-403. Election to qualify previous military service. (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his

military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

History: **En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1.**

Cross-References

PERS — election to qualify military service for full credit, 19-3-503.

Highway patrol retirement — election to qualify military service for full credit, 19-6-304.

Police retirement — local funds — election to qualify previous military service, 19-10-406.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation. A law enforcement officer who has combined service in the municipal police officers' retirement system and the sheriffs' retirement system because of a city-county consolidation, as provided in 19-7-308, is eligible for benefits as provided in 19-7-308.

History: **En. Sec. 2, Ch. 122, L. 1979.**

Cross-References

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-308.

19-9-405. Qualification of service from other Montana public retirement systems. (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, firefighters' unified, sheriffs', or game wardens' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the municipal police officers' retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-9-201 upon contribution by the employee of the actuarial cost of granting

this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: **En. Sec. 5, Ch. 145, L. 1981; amd. Sec. 5, Ch. 331, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence of (1)(a) inserted firefighters' unified retirement system; inserted (2).

Cross-References

Highway patrol retirement — qualification of service from other Montana public retirement systems, 19-6-305.

Sheriffs' retirement — qualification of service from other Montana public retirement systems, 19-7-309.

Game wardens' retirement — qualification of service from other Montana public retirement systems, 19-8-306.

Part 5

Financial Management

Part Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund — all municipalities, Title 19, ch. 11, part 2.

Firefighters' unified retirement — retirement account — creation and management, Title 19, ch. 13, part 5.

19-9-501. Retirement account. On July 1, 1977, there will be a pension trust fund to be maintained on behalf of the plan. The state treasurer is the custodian of the fund subject to the exclusive administrative control of the board.

History: **En. 11-1879 by Sec. 20, Ch. 456, L. 1977; R.C.M. 1947, 11-1879; amd. Sec. 17, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence, substituted "pension trust fund" for "account in the agency fund"; and in second sentence, changed "account" to "fund".

Cross-References

Fund structure, 17-2-102.

19-9-502. Management of funds by department of administration. Except as otherwise provided in this chapter, the department of administration, through the administrator and the board of investments, shall administer, invest, account for, and treat the funds deposited with it under this chapter in accordance with the rules dealing with the public employees' retirement system, insofar as such rules are not inconsistent with those promulgated and adopted by the board. The contributions of the state, employers, and members paid to the administrator under this chapter may be commingled for investment purposes.

History: **En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(4).**

Cross-References

Investment of public funds, Art. III, sec. 13, Mont. Const.

Department of Administration, 2-15-1001.

Board of Investments, 2-15-1005.

Authority to invest funds in obligation of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-9-503. Unfunded liabilities. (1) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in 19-9-702 and 19-9-703.

(2) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this chapter. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(3) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for any such excess payments.

(4) The excess unfunded liability for each city shall be revaluated by the administrator on July 1, 1980, as part of the normal actuarial valuations required in 19-9-504 reflecting the change in the contribution rates made in 19-9-601, 19-9-702, and 19-9-703, as amended by Chapter 375, Laws of 1979, and each city's funding position will be changed using the procedures of 19-9-107. The resulting report will be made available to the cities no later than October 1, 1980.

(5) If a majority of the cities participating in the municipal police officers' retirement system do not agree with the results of the revaluation outlined in subsection (4), they may, by mutual agreement of the cities, select a qualified actuary, as defined in 19-9-504, to perform a second actuarial valuation as of July 1, 1980, with the conclusions of the second actuarial valuation to replace the actuarial valuation discussed in subsection (4). The cost of the second actuarial valuation shall be paid by all cities participating in the system in proportion to their active membership in the system as of July 1, 1980.

(6) (a) On April 1, 1983, the administrator shall revaluate the excess unfunded liability for each city based on the actuarial valuation required in 19-9-504 for the period ended June 30, 1982. Each city with an excess unfunded liability as of June 30, 1982, shall pay 25% of this excess unfunded liability, with interest, in 10 annual installments, the first payment due May

1, 1983, and subsequent payments due May 1 of each year thereafter, with the final payment due May 1, 1992.

(b) Credits received by a city following the revaluation required in subsection (6)(a) must be reduced proportionately over a 10-year period beginning July 1, 1983.

(c) On July 1, 1993, each city shall pay the employer contribution rate specified in 19-9-703 without credit reduction, except for a city joining the plan after June 30, 1982. A city joining the plan after June 30, 1982, is subject to the provisions of 19-9-107.

(7) If a city is required to make payments on or after July 1, 1985, to amortize its excess and unfunded liability under a prior plan, these payments must be made by the state auditor from the premium taxes on insurance risks enumerated in 19-11-512.

(8) Subject to judicial review, the board is the determining body as to the interpretation and application of this section.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(4); amd. Sec. 2, Ch. 375, L. 1979; amd. Sec. 2, Ch. 286, L. 1983; amd. Sec. 1, Ch. 661, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 286 substituted present language in (6) for "The time and method of settlement on the unfunded liability will be as agreed on by the administrator and the city. The minimum allowable payment must be equal to or greater than the interest due at the interest rate used in the actuarial study for the unfunded balance."; and inserted (8).

Chapter 661 inserted (7).

Cross-References

PERS — conversion of local or state retirement plan, 19-3-203.

Firefighters' unified retirement — unfunded liabilities, 19-13-503.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Group life insurance for public employees authorized, 33-20-1104.

19-9-504. Actuarial valuation. The board shall engage the services of a qualified actuary to conduct an actuarial valuation of the plan in each even-numbered year. It shall include the actuary's determination of the financial condition of the plan, the level of annual contributions required to maintain the plan on an actuarially sound basis, and if applicable, the level of annual contributions required to amortize the excess and unfunded liabilities described in 19-9-503. A qualified actuary is one who is a member of the American academy of actuaries or of any organization considered by the board to have similar standards.

History: En. 11-1882 by Sec. 23, Ch. 456, L. 1977; R.C.M. 1947, 11-1882.

Cross-References

PERS — employment of actuary — biennial investigation and valuation, 19-3-305.

Highway patrol retirement — Board to keep actuarial data, 19-6-202.

Game wardens' retirement — Board to keep actuarial data, 19-8-202.

Police retirement — local funds — actuarial valuation of police retirement fund, 19-10-205.

Firefighters' unified retirement — actuarial valuation, 19-13-504.

19-9-505. Transfer of dormant member account. The board may, in its discretion, transfer member contributions to the employer's account if the member's contribution account has been dormant for a period of 10 years. No right of the member may be jeopardized by such a transfer, and the member contributions shall be transferred back to the member's name upon his subsequent reinstatement as a member.

History: En. 11-1888 by Sec. 29, Ch. 456, L. 1977; R.C.M. 1947, 11-1888.

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Judges' retirement — transfer of dormant savings accounts, 19-5-406.

Highway patrol retirement — transfer of dormant savings accounts, 19-6-407.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Game wardens' retirement — transfer of dormant accounts, 19-8-405.

Firefighters' unified retirement — transfer of dormant member account, 19-13-505.

Part 6

Employee Contributions

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-9-601. Member contributions. The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6% or, in the case of a member first employed by an employer as a police officer after June 30, 1979, 7 ½ % of his monthly compensation, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer. The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers.

History: **En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(1); amd. Sec. 3, Ch. 375, L. 1979.**

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — members' contributions deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' unified retirement — member contributions, 19-13-601.

19-9-602. Vesting and withdrawal of contributions. A member is at all times fully vested in the deductions made from his compensation as a member or as a member of a prior plan standing to his credit and may, at his discretion, withdraw the full amount of these deductions upon his termination of employment in accordance with 19-9-304 and forfeit all rights and interest with respect to any benefits which would otherwise become payable under the plan.

History: **En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(2).**

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — refund of member's contribution, 19-6-403.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-9-603. Redeposit of amounts withdrawn upon reinstatement. (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments not to exceed 12 monthly or 24 semimonthly installments, an amount equal to the member contributions which he withdrew plus an amount equal to the interest which would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions.

History: En. 11-1868 by Sec. 9, Ch. 456, L. 1977; R.C.M. 1947, 11-1868.

Cross-References

PERS — reinstatement after withdrawal of contributions, 19-3-704.

Sheriffs' retirement — reinstatement after withdrawal of contributions, 19-7-306.

Firefighters' unified retirement — redeposit of amounts withdrawn upon reinstatement, 19-13-603.

Part 7

Employer and State Contributions

Part Cross-References

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-9-701. Payment of employer and state contributions. Employer and state contributions shall be paid to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(1).

Cross-References

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — method of financing, 19-4-601.

Judges' retirement — payments into fund, 19-5-401.

Highway patrol retirement — payments into retirement account, 19-6-401.

Sheriffs' retirement — sources of money in the account, 19-7-402.

Game wardens' retirement — contributions to the retirement account, 19-8-501.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, 19-11-501.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually after the end of each fiscal year but no later than September 1 from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor by April 1 of each year of the annual compensation paid to all active members during the preceding year. Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985.

History: **En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(2); amd. Sec. 4, Ch. 375, L. 1979; amd. Sec. 1, Ch. 250, L. 1981; amd. Sec. 21, Ch. 549, L. 1981; amd. Sec. 2, Ch. 661, L. 1983.**

Compiler's Comments

1983 Amendment: At end, substituted "Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985" for "and the state's contribution shall be 14.04% of such compensation".

1981 Amendments: Chapter 250 inserted "after the end of each fiscal year but no later than September 1" after "annually" in the middle of the section; inserted "by April 1 of each year" after "auditor" near the end of the section.

Chapter 549 changed state's contribution from 14% to 14.04%.

Cross-References

State Auditor, 2-15-601.

State Auditor as ex officio Commissioner of Insurance, 2-15-1903.

Police retirement — local funds — annual state payments to municipality with police department, 19-10-305.

Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-11-512.

Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-12-301.

Firefighters' unified retirement — state contribution, 19-13-604.

Insurance premium tax, 33-2-705.

19-9-703. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. Before July 1, 1985, the employer's contribution shall be 14.04% of the total monthly compensation paid to all active members during the preceding month, 13.02% on and after July 1, 1985, and shall be payable monthly to the administrator.

History: **En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(3); amd. Sec. 5, Ch. 375, L. 1979; amd. Sec. 22, Ch. 549, L. 1981; amd. Sec. 3, Ch. 661, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted "Before July 1, 1985" at beginning of second sentence; and near end inserted "13.02% on and after July 1, 1985" after "during the preceding month".

1981 Amendment: Changed employer contribution from 14% to 14.04%.

Cross-References

PERS — employer contribution rates — actuarial determination, 19-3-801.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — local funds — city's contribution to funds, 19-10-301.

Firefighters' unified retirement — employer contribution, 19-13-605.

19-9-704. Taxing authority of employers. (1) For the purpose of making contributions required of a city under this chapter, when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

History: En. 11-1884 by Sec. 25, Ch. 456, L. 1977; R.C.M. 1947, 11-1884.

Cross-References

Municipalities — all-purpose mill levy authorized, 7-6-4451.

Police retirement — local funds — city's contribution to fund, 19-10-301.

Firefighters' retirement — special tax levy for fund required, 19-11-503, 19-11-504.

Firefighters' unified retirement — taxing authority of employers, 19-13-606.

19-9-705. Other moneys credited as employer contributions. All gifts, bequests, or emoluments given to an employer or member for the benefit of the plan or because of any member's service as a police officer, except when specifically allowed to be retained by the member by his employer, and all moneys withheld from the monthly compensation of a member for violation of the rules of his employer shall be paid to the administrator. The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such amounts are employer contributions but are in addition to the amounts required by 19-9-703.

History: En. 11-1869 by Sec. 10, Ch. 456, L. 1977; R.C.M. 1947, 11-1869.

Cross-References

Police retirement — local funds — gifts and money to be applied to fund, 19-10-304.

Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-9-706. Contributions based on disability compensation. (1) When an officer receives compensation under 7-32-4132, the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system.

History: En Sec. 4, Ch. 290, L. 1979; amd. Sec. 18, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: Changed two references to the retirement account in the agency fund to the pension trust fund.

Part 8

Service Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — local funds — eligibility for retirement benefits, Title 19, ch. 10, part 4.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-9-801. Eligibility for service retirement — commencement of allowance. Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(3) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire.

(4) The retirement allowance must commence on the first day of the month following the member's last day of membership service.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part); amd. Sec. 6, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (4).

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

19-9-802. Election to serve additional years. (1) A police officer who is eligible for service retirement under 19-9-801(1) or (2) may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday, the mandatory retirement date.

(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of

his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year.

History: En. 11-1889, 11-1890 by Secs. 30, 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(2), 11-1890(part).

Cross-References

Police retirement — local funds — option of officer to remain on active list, 19-10-403.

19-9-803. Application for service retirement. On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

History: En. 11-1870 by Sec. 11, Ch. 456, L. 1977; R.C.M. 1947, 11-1870.

Cross-References

PERS — time of commencement of allowance, 19-3-903.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — forfeiture of retirement allowance, 19-5-504.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Volunteer Firefighters' Compensation Act — procedure for claiming pension benefits, 19-12-403.

Firefighters' unified retirement — application for service retirement, 19-13-703.

19-9-804. Amount of retirement allowance. (1) A police officer who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer or who is retired under 19-9-801(3) prior to reaching 20 years of service shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary.

(3) A police officer who is retired under 19-9-801(3) and who was theretofore eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2).

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

Part 9

Disability Retirement and Death Benefits

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-9-901. Board's determination of disability. The board shall determine whether a member has become totally and permanently disabled and whether the disability is duty-related. In the discharge of its duties regarding such determination, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(3); amd. Sec. 9, Ch. 597, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part" for "section" after "carry out the purposes of this" near the end of the section and added "shall pay compensation for those medical services and advice".

Cross-References

Officers who may administer oaths, 1-6-101.

Administrative hearing, 2-4-612.

PERS — disability — determination by Board, 19-3-1003.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Judges' retirement — disability — determination by Board, 19-5-611.

Highway patrol retirement — disability — determination by Board, 19-6-611.

Sheriffs' retirement — disability — determination by Board, 19-7-611.

Game wardens' retirement — disability — determination by Board, 19-8-711.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — Board's determination of disability, 19-13-801.

Depositions, Rules 30 and 31, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

19-9-902. Eligibility for disability retirement. If a member is determined by the board to be totally and permanently disabled, he is entitled to a disability retirement allowance, regardless of the length of his service, commencing on the day following the member's last day of membership service.

History: En. 11-1871 by Sec. 12, Ch. 456, L. 1977; R.C.M. 1947, 11-1871; amd. Sec. 1, Ch. 389, L. 1979.

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Police retirement — local funds — eligibility for disability retirement, 19-10-402.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.

19-9-903. Amount of retirement allowance. (1) A police officer who is eligible under 19-9-902 before completing 20 years of service shall receive a disability retirement allowance equal to one-half his average final salary.

(2) A police officer who is retired under 19-9-902 and who, at the time of his injury or disability, was eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but had elected to serve additional years and was then serving such additional years shall be paid for the additional years at the rate prescribed in 19-9-804(2).

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(4), (5).

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-9-904. Termination of allowance. The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If an inactive member is determined by the board to be no longer totally and permanently disabled, his disability retirement allowance must be canceled when he is offered a position under 19-9-905. If he refuses to submit to a medical examination, his disability retirement allowance shall cease as of the date of such determination. He shall be notified of the determination by the board. The board may review the status of any inactive member at any time.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(1); amd. Sec. 10, Ch. 597, L. 1981.

Compiler's Comments

1981 Amendment: Added the first three sentences of the section ending with "when he was retired"; inserted "his disability retirement allowance must be canceled when he is offered a position under 19-9-905. If he refuses to submit to a medical examination," after "no longer totally and permanently disabled"; made minor changes in phraseology.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Firefighters' unified retirement — reinstatement upon termination of allowance, 19-13-805.

19-9-905. Reinstatement upon termination of allowance. (1) Any inactive member whose disability retirement allowance is cancelled as provided in 19-9-904 shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, whichever is first open. The board shall advise the employer that the disability retirement allowance has been cancelled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under 19-9-904, he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of such notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(2), (3); amd. Sec. 11, Ch. 597, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "whichever is first open" after "same classification with duties within his capacity" near the middle of (1); added subsection (2).

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Firefighters' unified retirement — reinstatement upon termination of allowance, 19-13-805.

19-9-906 through 19-9-910 reserved.

19-9-911. Death benefits. (1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent child, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive as long as the child or one of the children remains dependent as defined in 19-9-104. The payments shall be made to the child's duly appointed, qualified, and acting guardian for the child's use. If there is more than one such child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child shall cease and shall be

made to the remaining children until all the children are no longer dependent.

History: **En. 11-1875 by Sec. 16, Ch. 456, L. 1977; R.C.M. 1947, 11-1875; amd. Sec. 3, Ch. 186, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of (2), substituted "unmarried" for "the surviving spouse"; after "dependent" deleted "minor"; after "surviving dependent" substituted "child" for "minor children"; near middle of (2), after "would receive" substituted present language for ", until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 years or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children have reached the age of 18 years or are married".

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

PERS — beneficiaries, Title 19, ch. 3, part 13.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — death benefits, 19-5-602 through 19-5-604.

Highway patrol retirement — death benefits, 19-6-602 through 19-6-604.

Sheriffs' retirement — death benefits, 19-7-602 through 19-7-604.

Game wardens' retirement — death benefits, 19-8-702 through 19-8-704.

Police retirement — local funds — death benefits, 19-10-503.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Firefighters' retirement — payment of death benefits in absence of spouse or children, 19-11-607.

Volunteer Firefighters' Compensation Act — death benefit, 19-12-505.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-9-912. Payment of death benefits in absence of spouse or child. If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the administrator, the administrator shall pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before his death. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, this amount must be paid to the member's estate.

History: **En. Sec. 2, Ch. 186, L. 1983.**

Part 10

Benefits in General

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-9-1001. Payment of retirement allowances. Retirement allowances under this chapter shall be paid out of the fund and shall be determined as provided in 19-9-802, 19-9-804, and 19-9-903.

History: **En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).**

Cross-References

PERS — management of allowance payments, Title 19, ch. 3, part 14.

19-9-1002. Retirement allowances to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in monthly installments. They may not be increased or decreased, except as specifically provided herein, or repealed or revoked except by an act of the Montana legislature.

History: En. 11-1874 by Sec. 15, Ch. 456, L. 1977; R.C.M. 1947, 11-1874.

Cross-References

PERS — frequency of allowance payments, 19-3-1402.

Teachers' retirement — payments to be monthly, 19-4-703.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Firefighters' unified retirement — retirement allowances to be monthly and fixed, 19-13-1001.

19-9-1003. Correction of erroneous payments. If any change in records fraudulently made or any mistake in records inadvertently made results in any member, survivor, or beneficiary receiving more or less than he was entitled to, then, on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(2).

Cross-References

PERS — adjustment of errors in payments, 19-3-1403.

Teachers' retirement — correction of erroneous payments, 19-4-705.

Judges' retirement — correction of erroneous payments, 19-5-703.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Game wardens' retirement — correction of erroneous payments, 19-8-804.

Firefighters' unified retirement — correction of erroneous payments, 19-13-1002.

19-9-1004. Board's authority to refuse to make payments. The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity.

History: En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887.

Cross-References

Highway patrol retirement — Board's authority to refuse payments, 19-6-703.

Sheriffs' retirement — Board's authority to refuse to make payments, 19-7-703.

Game wardens' retirement — Board's authority to refuse to make payments, 19-8-803.

19-9-1005. Exemption from taxes. Any money received as a retirement allowance in accordance with the provisions of this chapter is exempt from any state or municipal tax.

History: En. 11-1876 by Sec. 17, Ch. 456, L. 1977; R.C.M. 1947, 11-1876.

Cross-References

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Firefighters' unified retirement — exemption from taxes, 19-13-1003.

19-9-1006. Protection from legal process — nonassignability. Except as provided in this chapter, the benefits payable hereunder are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process and no member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

History: **En. 11-1877 by Sec. 18, Ch. 456, L. 1977; R.C.M. 1947, 11-1877; amd. Sec. 12, Ch. 114, L. 1979.**

Cross-References

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all surviving spouses or dependent children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each surviving spouse or dependent child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, his surviving spouse or dependent children are entitled to receive payments from the plan, the amount which would have been paid to an eligible surviving spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The department of administration shall compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be reported to and paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(3) to the administrator after the end of each fiscal year, but no later than September 1. This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one dependent child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such dependent children under this section shall be determined as if there were one such dependent child and the supplementary payment shall be made to the dependent children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 13, Ch. 114, L. 1979; amd. Sec. 2, Ch. 457, L. 1979; amd. Sec. 2, Ch. 250, L. 1981; amd. Sec. 53, Ch. 566, L. 1981; amd. Sec. 71, Ch. 575, L. 1981; amd. Sec. 4, Ch. 186, L. 1983.

Compiler's Comments

1983 Amendment: Throughout section, inserted "surviving" before "spouses" and substituted "dependent children" for "minor children"; in (2)(d)(iii), after "1975," substituted "his surviving" for "and who is survived by a" and inserted "are" after "children".

1981 Amendments — Composite: Chapter 250 deleted "to the state auditor" after "report" in (2); substituted "department of administration" for "state auditor" at the beginning of (3); deleted "upon receipt of the report referred to in subsection (2)" after "shall" at the beginning of (3); inserted "reported to and" after "difference shall be" in (3); substituted "after the end of each fiscal year, but no later than September 1" for "no later than May 31 of each year" near the middle of (3); substituted "after the end of each fiscal year but no later than September 1" for "on or before June 30 of each year" in (4).

Chapter 566 changed the internal reference in (3) to risks enumerated in 19-11-512 from 19-11-512(5) to 19-11-512(3). An amendment to 19-11-512 by Ch. 566, L. 1981, renumbered the subsections of 19-11-512 which required an amendment to this section.

Chapter 575 in (3), substituted "19-11-512(6)" for "19-11-512(5)".

The Code Commissioner has codified the amendment made by Ch. 566, in favor of the amendment made by Ch. 575, inasmuch as both new subsection references are traceable to the same language in 19-11-512 and the Ch. 566 amendment is the most appropriate in light of the renumbering of the subsections of 19-11-512 by Ch. 566.

Cross-References

Teachers' retirement — increase in allowances of certain retirees, 19-4-707.

Police retirement — local funds — supplement to certain pensions, 19-10-506.

Firefighters' retirement — supplement to certain pensions, 19-11-606.

Firefighters' unified retirement — supplement to certain retirement allowances, 19-13-1006.

19-9-1008. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. Sec. 14, Ch. 114, L. 1979.

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Judges' retirement — withholding of group insurance premium from retirement benefit, 19-5-705.

Highway patrol retirement — withholding of group insurance premium from retirement benefit, 19-6-706.

Sheriffs' retirement — withholding of group insurance premium from retirement benefit, 19-7-706.

Game wardens' retirement — withholding of group insurance premium from retirement benefit, 19-8-806.

Police retirement — local funds — withholding of group insurance premium from retirement benefit, 19-10-505.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

CHAPTER 10

POLICE RETIREMENT — LOCAL FUNDS

Part 1 — General Provisions

Section
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Part 5 — Benefits

19-10-501. Service retirement allowance.
19-10-502. Disability retirement allowance.
19-10-503. Death benefits.
19-10-504. Protection of benefits from legal process.
19-10-505. Withholding of group insurance premium from retirement benefit.
19-10-506. Supplement to certain pensions.

Chapter Cross-References

Municipal police force, Title 7, ch. 32, part 41.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriff's retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-10-101. Definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in this chapter includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

History: En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; R.C.M. 1947, 11-1839.1.

Part 2

Management of Police Retirement Funds

Part Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Firefighters' retirement — management and protection of fund — all municipalities, Title 19, ch. 11, part 2.

Firefighters' unified retirement — retirement account — creation and management, Title 19, ch. 13, part 5.

19-10-201. Local boards of trustees of funds. (1) Each city or town which has a police retirement fund must have a board of trustees of such fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They shall be selected by a majority vote of the members of the police department on the active list of the city or town. One shall be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the chairman and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city which elects to participate in the municipal police officers' retirement system under 19-9-107 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the department of administration and the board, as provided in the Municipal Police Officers' Retirement Act.

History: (1) thru (3)En. Sec. 12, Ch. 120, L. 1929; re-en. Sec. 5108.12, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1977; Sec. 11-1828, R.C.M. 1947; (4)En. 82A-225, by Sec. 34, Ch. 456, L. 1977; Sec. 82A-225, R.C.M. 1947; R.C.M. 1947, 11-1828, 82A-225; amd. Sec. 15, Ch. 114, L. 1979.

Cross-References

Board of Trustees continued — consolidation of local government, 7-3-1344.

Montana Trustees' Powers Act, Title 72, ch. 21.

19-10-202. Limit on use of fund. A police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

History: En. Sec. 14, Ch. 120, L. 1929; re-en. Sec. 5108.14, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1830; amd. Sec. 16, Ch. 114, L. 1979.

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Teachers' retirement — restrictions on use of money, 19-4-502.

Judges' retirement — limit on use of fund, 19-5-405.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-10-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211. However, these funds may be invested under the provisions of 17-6-204.

History: (1)En. Sec. 11, Ch. 120, L. 1929; re-en. Sec. 5108.11, R.C.M. 1935; Sec. 11-1827, R.C.M. 1947; (2)En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; Sec. 11-1829, R.C.M. 1947; (3)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1827, 11-1829(2), (3), 11-1836(part); amd. Sec. 17, Ch. 114, L. 1979; amd. Sec. 3, Ch. 395, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "except that the fund may not be invested in common stocks" from subsection (3) after "investments in 17-6-211".

Cross-References

Housing authority bonds as legal investments, 7-15-4505.

PERS — investment of fund, 19-3-602.

Teachers' retirement — financial administration of money, 19-4-501.

Highway patrol retirement — investment of retirement account, 19-6-405.

Sheriffs' retirement — investment of account, 19-7-405.

Game wardens' retirement — investment of account, 19-8-403.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Firefighters' retirement — investment of fund by trustees, 19-11-402.

Firefighters' retirement — investment of fund by Board of Investments, 19-11-403.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

19-10-204. Trustees' report to state auditor. The board of trustees of each police retirement fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund.

History: En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; R.C.M. 1947, 11-1836(part); amd. Sec. 18, Ch. 114, L. 1979.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

19-10-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the department of administration before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police retirement fund. The valuation shall consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request.

History: En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; R.C.M. 1947, 11-1829(1); amd. Sec. 1, Ch. 64, L. 1979; amd. Sec. 19, Ch. 114, L. 1979.

Cross-References

PERS — employment of actuary — biennial investigation and valuation, 19-3-305.

Highway patrol retirement — Board to keep actuarial data, 19-6-202.

Game wardens' retirement — Board to keep actuarial data, 19-8-202.

Police retirement — statewide plan — actuarial valuation, 19-9-504.

Firefighters' unified retirement — actuarial valuation, 19-13-504.

Part 3

Contributions to Funds

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-10-301. City's contribution to fund. Each city, other than one of the first or second class, which has a police retirement fund and which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-107 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of such city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund is such that it cannot be met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; re-en. Sec. 5108.7, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974; amd. Sec. 1, Ch. 224, L. 1977; amd. Sec. 35, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1823; amd. Sec. 20, Ch. 114, L. 1979.

Cross-References

Power to levy taxes for pension fund unaffected by law on Department of Public Safety, 7-3-4464.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by the state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Firefighters' unified retirement — employer contribution, 19-13-605.

19-10-302. Officer's contribution deducted from salary. The treasurer of an incorporated city which has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of his monthly compensation for his services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974; amd. Sec. 2, Ch. 224, L. 1977; amd. Sec. 36, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1825; amd. Sec. 21, Ch. 114, L. 1979.

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — members' contributions deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contributions, 19-9-601.

Firefighters' retirement — contributions to fund, 19-11-501.

Firefighters' unified retirement — member contributions, 19-13-601.

Obligation of employer to give employee itemized statement of deductions, 39-3-101.

19-10-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has 10 years or more of service, the amount paid shall include regular interest on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through such salary deductions, without interest.

History: En. 11-1847 by Sec. 17, Ch. 335, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1847.

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — refund of member's contribution, 19-6-403.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-10-304. Gifts and money to be applied to fund. The following shall be placed in the police retirement fund and transmitted promptly to the board of trustees:

(1) all money withheld from salaries of police officers for the violation of rules of the police department;

(2) all bequests, gifts, or emoluments paid or given on account of any extraordinary service of a member of the police department, except when specifically allowed to be retained by the officer by the mayor, commissioners, and chief of police; and

(3) all money derived from the provisions of this chapter.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; re-en. Sec. 5108.10, R.C.M. 1935; amd. Sec. 8, Ch. 335, L. 1974; amd. Sec. 37, Ch. 456, L. 1977; R.C.M. 1947, 11-1826; amd. Sec. 22, Ch. 114, L. 1979.

Cross-References

Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.

Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-10-305. Annual state payments to municipality with police department. (1) After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-11-512.

(2) The payments provided for by 19-10-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

(3) Each city or town which has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(4) Payments provided for in 19-10-205 and subsection (1) of this section are in addition to those provided for in 19-10-301.

History: (1)En. Sec. 1, Ch. 261, L. 1965; amd. Sec. 1, Ch. 229, L. 1975; amd. Sec. 38, Ch. 456, L. 1977; Sec. 11-1834, R.C.M. 1947; (2)En. Sec. 2, Ch. 261, L. 1965; amd. Sec. 2, Ch. 128, L. 1974; amd. Sec. 1, Ch. 230, L. 1975; Sec. 11-1835, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1834, 11-1835, 11-1836(part); amd. Sec. 23, Ch. 114, L. 1979; amd. Sec. 3, Ch. 250, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "After" for "At" at the beginning of (1).

Cross-References

Expenditure of state payments by municipality not having police retirement system — annual report, 7-32-4120.

Police retirement — statewide plan — state contribution, 19-9-702.

Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-11-512.

Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-12-301.

Firefighters' unified retirement — state contribution, 19-13-604.

Part 4

Eligibility for Retirement Benefits

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-10-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and shall retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when he has completed 20 years or

more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(3) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall pass from the active list to the retired list.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part).

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

19-10-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall be placed on the retired list of the city or town.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(1)(d).

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.

19-10-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under subsection (1) or (2) of 19-10-401 may transfer, as of the time he becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday.

(2) A police officer whose eligibility depends on 19-10-401(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday, and he shall be paid the additional 1% for each such year.

History: (1)En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1843, R.C.M. 1947; (2)En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(2), 11-1844(part).

Cross-References
Police retirement — statewide plan — election to serve additional years, 19-9-802.

19-10-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and passed into the retired list of police officers so as to enjoy all the benefits, pensions, and rights which accrue to police officers placed on the retired list in said city or town. The pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force.

History: En. Sec. 2, Ch. 205, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1809.

19-10-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part).

Cross-References
PERS — absence in military service, 19-3-502.
Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.
Judges' retirement — military service, 19-5-304.
Highway patrol retirement — military service, 19-6-303.
Sheriffs' retirement — military service, 19-7-303.
Game wardens' retirement — military service, 19-8-304.
Police retirement — statewide plan — military service, 19-9-402.
Firefighters' unified retirement — military service, 19-13-402.

19-10-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more

than 25% of the total of all his years of military service, including reserve and active duty time.

History: **En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 24, Ch. 114, L. 1979.**

Cross-References

PERS — election to qualify military service for full credit, 19-3-503.

Teachers' retirement — limit on creditable service which can be awarded, 19-4-405.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — election to qualify military service for full credit, 19-6-304.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Part 5

Benefits

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-10-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-10-401(1) or (2) and does not elect to serve any additional years as an active police officer or who is placed on the retired list under 19-10-401(3) prior to reaching 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(3) A police officer who is placed on the retired list under 19-10-401(3) and who was theretofore eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2) of this section.

History: **En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 25, Ch. 114, L. 1979.**

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-10-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-10-402 before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is placed on the retired list under 19-10-402 and who, at the time of his injury or disability, was eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but had elected to serve additional years and was then serving such additional years shall be paid for the additional years over his original eligibility at the rate prescribed in 19-10-501(2).

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 26, Ch. 114, L. 1979.

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of retirement allowance, 19-9-903.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-10-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a city, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) If the officer leaves one or more dependent minor children, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments as a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting

guardian for their use. If there is more than one such child, upon each child reaching the age of 18 or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children, until all the children have either reached the age of 18 or are married.

History: **En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(2); amd. Sec. 27, Ch. 114, L. 1979.**

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — payments upon employment-related death, 19-5-603.

Judges' retirement — payments in case of death from other causes, 19-5-604.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Highway patrol retirement — payments upon death from other causes, 19-6-604.

Sheriffs' retirement — payments in case of death after retirement, 19-7-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — death benefits, 19-8-703, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Firefighters' retirement — death benefits, 19-11-605, 19-11-607.

Volunteer Firefighters' Compensation Act — death benefits, 19-12-505, 19-12-506.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

Group life insurance for public employees authorized, 33-20-1104.

19-10-504. Protection of benefits from legal process. The benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-10-505.

History: **En. 11-1845 by Sec. 15, Ch. 335, L. 1974; amd. Sec. 1, Ch. 214, L. 1977; amd. Sec. 13, Ch. 224, L. 1977; R.C.M. 1947, 11-1845.**

Cross-References

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxes and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

Firefighters' unified retirement — protection from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

19-10-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 11-1845.1 by Sec. 2, Ch. 214, L. 1977; R.C.M. 1947, 11-1845.1.**

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Judges' retirement — withholding of group insurance premium from retirement benefit, 19-5-705.

Highway patrol retirement — withholding of group insurance premium from retirement benefit, 19-6-706.

Sheriffs' retirement — withholding of group insurance premium from retirement benefit, 19-7-706.

Game wardens' retirement — withholding of group insurance premium from retirement benefit, 19-8-806.

Police retirement — statewide plan — withholding of group insurance premium from retirement benefit, 19-9-1008.

Payments to volunteer fire companies maintaining group insurance, 19-12-103.

Firefighters' unified retirement — withholding of group insurance premium from retirement benefit, 19-13-1005.

Group life insurance for public employees authorized, 33-20-1104.

19-10-506. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving such payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 19-10-305(2), to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-10-305(1).

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 28, Ch. 114, L. 1979.

Cross-References

PERS — adjustment of allowance for certain members, 19-3-905.

Teachers' retirement — increase in allowances of certain retirees, 19-4-707.

Police retirement — statewide plan — supplement to certain pensions, 19-9-1007.

Firefighters' retirement — supplement to certain pensions, 19-11-606.

Firefighters' unified retirement — supplement to certain retirement allowances, 19-13-1006.

CHAPTER 11

FIREFIGHTERS' RETIREMENT

Part 1 — General Provisions

Section
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19-11-104. Board of trustees of association.
19-11-105. Establishment of disability and pension fund.
19-11-106. Transfer of money into fund by city treasurer.
19-11-107. Retention of firefighters' rights when local government consolidated.

Part 2 — Management and Protection of Fund

19-11-201. Management of fund.
19-11-202. Treasurer's bond.
19-11-203. Use of disability and pension fund.
19-11-204. Audit and report by board of trustees.
19-11-205. Annual report of secretary and treasurer to association and state auditor.
19-11-206. Authority of department of commerce — mishandling of funds.
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19-11-208. Protection of fund as to bank depository securities.

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(Repealed. Sec. 62, Ch. 566, L. 1981)

Part 4 — Management of Association—Investment of Fund

19-11-401. Management of association.
19-11-402. Investment of fund by trustees.
19-11-403. Investment of fund by board of investments.

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19-11-502. Refund of firefighter's contribution.
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19-11-505 through 19-11-510 reserved.
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19-11-512. State auditor to pay association out of insurance premium taxes.
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19-11-514. State treasurer to pay warrants.

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19-11-601. Benefits the association may provide.
19-11-602. Service pension.
19-11-603. Partial service pension.
19-11-604. Disability pension.
19-11-605. Pensions to surviving spouses and children.
19-11-606. Supplement to certain pensions.
19-11-607. Payment of death benefits in absence of spouse or child.
19-11-608 through 19-11-610 reserved.
19-11-611. Procedure — applying for and collecting benefits.
19-11-612. Protection of benefits from legal process — nonassignability.

Chapter Cross-References

Municipal fire departments, Title 7, ch. 33, part 41.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3. part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-11-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Association" means the fire department relief association provided for in 19-11-102.

(2) "Disability and pension fund" or "fund" means the fund provided for in 19-11-105.

(3) "Fire department" includes all fire departments, consisting of paid, part-paid, or volunteer firefighters or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

(5) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities or subsequent districts created for urban fire protection services.

History: (1) thru (4)En. 11-1910.1 by Sec. 1, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1910.1, R.C.M. 1947; (5)En. 11-1910.2 by Sec. 2, Ch. 489, L. 1977; Sec. 11-1910.2, R.C.M. 1947; R.C.M. 1947, 11-1910.1, 11-1910.2.

19-11-102. Formation of fire department relief association — membership. (1) The confirmed members of a fire department, as defined in 19-11-101, may form a local association to be known as the fire department relief association of the city or town of .... (naming the city or town). When an association is formed, it shall be incorporated under the laws of this state. No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has firefighting equipment in serviceable condition which has a value of $750 or more.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(1), (2).

Cross-References

Cooperative associations, Title 35, ch. 15.

19-11-103. Officers of association. When an association is formed, the members shall elect officers by a majority vote. The officers shall be a president, a secretary, a treasurer, and five members to serve on the board of trustees. After the incorporation of an association, the officers shall be elected annually on or before April 15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(3).

Cross-References

Cooperative associations — directors and officers, 35-15-304.

19-11-104. Board of trustees of association. A board of trustees of such fire department relief association shall be created to consist of seven members:

(1) the president of the fire department relief association and the chief of the fire department, if an active member of the association, shall be ex officio members; and

(2) five members to be elected by the members of such association at the annual election, to be held on or before April 15 of each year.

History: En. Sec. 4, Ch. 71, L. 1907; Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R.C.M. 1921; amd. Sec. 4, Ch. 58, L. 1927; R.C.M. 1947, 11-1913.

Cross-References

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Obligations of trustee, Title 72, ch. 20, part 2.

Montana Trustees' Powers Act, Title 72, ch. 21.

19-11-105. Establishment of disability and pension fund. A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or hereafter forms an association under 19-11-102.

History: En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; R.C.M. 1947, 11-1910(1).

19-11-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-11-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt therefor. Thereafter, the city treasurer shall, as moneys are received by him for the credit of the fund or association, turn the same over to the treasurer of the association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R.C.M. 1921; amd. Sec. 13, Ch. 58, L. 1927; re-en. Sec. 5131, R.C.M. 1935; amd. Sec. 9, Ch. 157, L. 1977; R.C.M. 1947, 11-1924.

19-11-107. Retention of firefighters' rights when local government consolidated. A firefighter who has vested rights in a disability and pension fund maintains prior vested rights in the fund upon its transfer to a consolidated county municipality. A disability and pension fund established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firefighters employed by any fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation. The board of trustees of the disability and pension fund shall continue as provided in 19-11-104. Except as provided in this section, the disability and pension fund shall be continued and administered in the manner prescribed by law for such funds.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(2).

Cross-References

Creation, alteration, and abandonment of local governments, Title 7, ch. 2.

Alternative forms of local government, Title 7, ch. 3.

Firefighter's rights in event of city-county consolidation, 7-33-4131.

Sheriffs' retirement — service under Municipal Police Officers' Retirement System prior to or following city-county consolidation, 19-7-308.

Police retirement — statewide plan — effect on members of prior plans, 19-9-106.

Firefighters' unified retirement — effect on members of prior plans, 19-13-107.

Part 2

Management and Protection of Fund

Part Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' unified retirement — retirement account — creation and management, Title 19, ch. 13, part 5.

19-11-201. Management of fund. Except as otherwise provided in this chapter, the association and its board of trustees have full charge, management, and control of the disability and pension fund. The fund shall be kept separate from other funds and shall be held by the treasurer of the association.

History: **En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R.C.M. 1921; re-en. Sec. 5137, R.C.M. 1935; amd. Sec. 17, Ch. 157, L. 1977; Sec. 11-1930, R.C.M. 1947; En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en Sec 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; Sec. 11-1910, R.C.M 1947; R.C.M. 1947, 11-1910(2), 11-1930.**

Cross-References

PERS — management of fund, 19-3-601.

Teachers' retirement — financial administration of money, 19-4-501.

Game wardens' retirement — management of account, 19-8-402.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-11-202. Treasurer's bond. No treasurer of an association may enter upon his duties until he has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of his duties according to law. The amount of the bond shall be approved by the association and may not exceed $25,000. The bond shall be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, his official bond will cover the faithful discharge of his duties as such.

History: **En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(2).**

Cross-References

Official bonds, Title 2, ch. 9, part 5.

State finance — limits on expenditures — penalty for violation, 17-8-103, 17-8-104.

19-11-203. Use of disability and pension fund. The fund may not be used for any purpose other than investment, as provided in parts 3 and 4 of this chapter, and the payment of the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) a pension to a member who has become permanently maimed or disabled;

(3) a benefit or allowance to a member who has suffered a permanent disabling injury;

(4) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(5) a benefit, not exceeding $750, to defray the funeral expenses of a member;

(6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;

(7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(8) the return of employee contributions as provided in this chapter.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; R.C.M. 1947, 11-1928(1).

Cross-References

PERS — restrictions on use of fund, 19-3-603.

Teachers' retirement — restrictions on use of money, 19-4-502.

Judges' retirement — limit on use of fund, 19-5-405.

Highway patrol retirement — restrictions on use of assets, 19-6-406.

Sheriffs' retirement — restrictions on use of assets, 19-7-406.

Game wardens' retirement — restrictions on use of assets, 19-8-404.

Police retirement — local funds — limit on use of fund, 19-10-202.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-11-204. Audit and report by board of trustees. The board of trustees of the association shall audit the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(1).

19-11-205. Annual report of secretary and treasurer to association and state auditor. The secretary and treasurer of the association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes money has been expended. They shall file the report with the association and a duplicate of it with the state auditor. No money may be paid to the treasurer of the association until the report is filed.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(1).

Cross-References

State Auditor, Art, VI, sec. 1, Mont. Const.; 2-15-601.

Police retirement — local funds — trustees' report to State Auditor, 19-10-204.

19-11-206. Authority of department of commerce — mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the department of commerce.

(2) When a complaint is made to the department of commerce that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the association treasurer until the misspent money has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935;

amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(3)(a), (3)(b); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to department of commerce for references to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1) and (2).

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-11-207. Theft from funds. Any person who fraudulently appropriates any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who takes part in or in any manner aids in any scheme or plan whereby the fund or association is defrauded out of any of the money in the fund is guilty of theft and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years, by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R.C.M. 1921; amd. Sec. 7, Ch. 58, L. 1927; re-en. Sec. 5124, R.C.M. 1935; amd. Sec. 44, Ch. 359, L. 1977; R.C.M. 1947, 11-1916; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Theft, 45-6-301.

19-11-208. Protection of fund as to bank depository securities. The cash in the disability and pension fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935;

amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(part).

Cross-References

Deposit of public funds in financial institutions, 7-6-201.

Giving security for deposit prohibited — exceptions, 32-1-447.

Part 3

Management — First and Second Class Cities (Repealed. Sec. 62, Ch. 566, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

19-11-301. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(a); amd. Sec. 1, Ch. 270, L. 1981.

19-11-302. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(c).

19-11-303. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(b); amd. Sec. 7, Ch. 274, L. 1981.

Part 4

Management of Association — Investment of Fund

Part Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' unified retirement — retirement account — creation and management, Title 19, ch. 13, part 5.

19-11-401. Management of association. The management of the fire department relief associations and of fire department relief associations of pure volunteer fire departments in first- and second-class cities is vested in the boards of trustees, except as provided in 19-11-402 and 19-11-403.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(a); amd. Sec. 2, Ch. 270, L. 1981; amd. Sec. 54, Ch. 566, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 270 added "and of fire department relief associations of pure volunteer fire departments in first- and second-class cities".

Chapter 566 deleted "in municipalities other than first- and second-class cities" after "The management of fire department relief associations".

Cross-References

PERS — management of fund, 19-3-601.

Teachers' retirement — financial administration of money, 19-4-501.

Game wardens' retirement — management of account, 19-8-402.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Firefighters' unified retirement — management of funds by Department of Administration, 19-13-502.

19-11-402. Investment of fund by trustees. (1) Subject to the provisions of 19-11-403, when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in:

(a) time or saving deposits in a solvent bank, building and loan association, or savings and loan association operating in the county where the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association".

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(b); amd. Sec. 1, Ch. 393, L. 1979.

Cross-References

Authority to invest funds in obligations of housing authority, 7-15-4505.

Bond issues, Title 17, ch. 5.

Banks — demand or time deposits, 32-1-445.

Powers and duties of building and loan associations, 32-2-401.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

19-11-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-11-402, the surplus money in the fund shall be remitted to the state treasurer for investment under the direction of the board of investments as is provided in 17-6-204. The department of commerce shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(c); amd. Sec. 2, Ch. 393, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 55, Ch. 566, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendments: Chapter 274 substituted "department of administration" for "department of community affairs".

Chapter 566 inserted "Whenever" in place of "when" at the beginning of (1); inserted "under the direction of" in place of "by" following "state treasurer for investment"; substituted "17-6-204" for "19-11-302 for associations in first- and second-class cities"; and added subsection (2).

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Department of Administration, Title 2, ch. 15, part 10.

Authority to invest funds in obligations of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

Part 5

Contributions to Fund

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-11-501. Contributions to fund. The disability and pension fund shall consist of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly fee which shall be paid into the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-11-503 and 19-11-504;

(4) all moneys received from the state, including those provided for in 19-11-512; and

(5) all interest and other income earned from the investment of the fund.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; R.C.M. 1947, 11-1911(1).

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

PERS — employer contribution rates — actuarial determination, 19-3-801.

Teachers' retirement — method of financing, 19-4-601.

Judges' retirement — payments into fund, 19-5-401.

Highway patrol retirement — payments into retirement account, 19-6-401.

Sheriffs' retirement — sources of money in the account, 19-7-402.

Game wardens' retirement — contributions to the retirement account, 19-8-501.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — statewide plan — payment of employer and state contributions, 19-9-701.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

Employer to furnish itemized statement of deductions, 39-3-101.

19-11-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all his monthly contributions to the fund, within 60 days after his permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability which would otherwise qualify him or his surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-11-603 may either elect to take the refund provided for in this section or elect to receive the partial pension.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1911(2).

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — refund of member's contributions, 19-6-403.

Sheriffs' retirement — discharge or voluntary resignation prior to eligibility for retirement, 19-7-304.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' unified retirement — vesting and withdrawal of contributions, 19-13-602.

19-11-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to 3% of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than 3% of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-11-504. The special tax shall be collected as other taxes are collected and, when so collected, shall be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(1); amd. Sec. 59, Ch. 614, L. 1981; amd. Sec. 2, Ch. 372, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3).

1981 Amendment: Increased 2% to 3% wherever it appears.

Cross-References

Power to levy taxes for pension funds unaffected by law or Department of Public Safety, 7-3-4464.

Municipal taxation, Title 7, ch. 6, part 44.

Firefighters' unified retirement — taxing authority of employers, 19-13-606.

19-11-504. Amount of special tax levy. Whenever the fund contains an amount which is less than 3% of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(2); amd. Sec. 56, Ch. 566, L. 1981; amd. Sec. 60, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendments — Composite Section: Chapter 566 deleted former subsections (1) and (2) that provided for a special tax levy of not more than 4 mills for first- and second-class cities; deleted "In cities of the third class" at the beginning of the section; and substituted "Whenever" for "when" at the beginning of the section.

Chapter 614 increased 2% to 3% in (1), (2)(a), (2)(b), and (3); and increased 1% to 1.5% in (2)(a).

Because the deletion of former subsections (1) and (2) by Ch. 566, L. 1981, is an amendment in the nature of a repeal, the Code Commissioner has not codified the amendments to these subsections contained in Ch. 614, L. 1981. See 1-2-204.

Cross-References

Power to levy taxes for pension funds unaffected by law on Department of Public Safety, 7-3-4464.

Municipal taxation, Title 7, ch. 6, part 44.

19-11-505 through 19-11-510 reserved.

19-11-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R.C.M. 1921; re-en. Sec. 5125, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1975; R.C.M. 1947, 11-1917.

Cross-References

Duties of City Clerk related to administration, 7-4-4501.

19-11-512. State auditor to pay association out of insurance premium taxes. (1) After the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to 1 ½ mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (3) collected by the state auditor.

(2) If the payment provided for in subsection (1) is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is $100.

(3) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R.C.M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; re-en. Sec. 5127, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974; amd. Sec. 1, Ch. 227, L. 1975; amd. Sec. 2, Ch. 228, L. 1975; amd. Sec. 1, Ch. 264, L. 1975; amd. Sec. 6, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 27, Ch. 566, L. 1977; R.C.M. 1947, 11-1919; amd. Sec. 1, Ch. 296, L. 1979; amd. Sec. 4, Ch. 250, L. 1981; amd. Sec. 57, Ch. 566, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 250 substituted "After" for "At" at the beginning of (1).

Chapter 566 deleted former subsections (1), (2), and (3), which are no longer necessary because cities of the first and second class can no longer participate in the retirement plan provided for in Title 19, chapter 11; deleted "except cities and towns of the first and second class" after "the treasurer of every city or town" in the first sentence of (1); changed internal references to conform to 1981 deletions.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

State Auditor ex officio Commissioner of Insurance, 2-15-1903.

City Treasurer, 7-4-4701.

Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-12-301.

Tax on insurance premiums, 33-2-705.

19-11-513. Transfer of premium taxes to state treasury. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this chapter and shall pay an amount equal to the estimate into the state treasury, to the credit of the state special revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; re-en. Sec. 5127.1, R.C.M. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974; R.C.M. 1947, 11-1920; amd. Sec. 58, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "The state auditor shall pay the actuary fee as required by 19-11-303" between the first and last sentences. Section 19-11-303 was repealed by Ch. 566, L. 1981.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

Fund structure, 17-2-102.

19-11-514. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this chapter, to pay to the treasurer of the city or town, out of moneys in the state special revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R.C.M. 1921; amd. Sec. 10, Ch. 58, L. 1927; re-en. Sec. 5128, R.C.M. 1935; amd. Sec. 70, Ch. 147, L. 1963; R.C.M. 1947, 11-1921; amd. Sec. 2, Ch. 296, L. 1979; amd. Sec. 59, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted provisions applicable only to first- and second-class cities which are no longer eligible to participate in the retirement plan provided for in Title 19, chapter 11.

Cross-References

Ex officio State Treasurer, 2-15-1002.

Part 6

Benefits

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 12, part 4.

Firefighters' unified retirement — benefits in general, Title 19, ch. 13, part 10.

19-11-601. Benefits the association may provide. Every fire department relief association may allow to its members benefits for the following causes, as provided by law:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) to a member who has become maimed or disabled for life in line of duty;

(3) to a member who has suffered injury in line of duty;

(4) to a member who has contracted sickness in line of duty;

(5) funeral expenses of a member;

(6) pensions to the surviving spouse, orphan, or orphans of a deceased member.

History: En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; R.C.M. 1947, 11-1915(part).

Cross-References

Teachers' retirement — benefits, 19-4-701.

19-11-602. Service pension. (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department. No member is eligible to receive a service pension prior to attaining the age of 50 years.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the pension may not exceed $150 a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless he is making a monthly contribution to the disability and pension fund, as required by 19-11-501, and is on active duty as a fully paid member of a fire department when he reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of his age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of his volunteer fire department, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control may nevertheless qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of his age.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R.C.M. 1921; amd. Sec. 14, Ch. 58, L. 1927; re-en. Sec. 5132, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974; amd. Sec. 1, Ch. 58, L. 1977; amd. Sec. 10, Ch. 157, L. 1977; amd. Sec. 3, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1925; amd. Sec. 1, Ch. 446, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (3), increased monthly pension payment to volunteer firefighters from $100 to $150 a month.

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-11-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active firefighter;

(b) is permanently separated from service on or after July 1, 1977;

(c) does not qualify for a disability pension under 19-11-604; and

(d) does not receive a refund of his contributions under 19-11-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the firefighter dies after he is permanently separated from service and before he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the firefighter dies after he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-11-602 do not apply to pensions received under this section.

History: En. 11-1925.1 by Sec. 2, Ch. 484, L. 1977; R.C.M. 1947, 11-1925.1; amd. Sec. 29, Ch. 114, L. 1979.

Cross-References

PERS — early retirement allowance, 19-3-906.

Teachers' retirement — early retirement, 19-4-802.

Highway patrol retirement — involuntary retirement allowance, 19-6-503.

Sheriffs' retirement — early retirement option, 19-7-502.

19-11-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services to the fire department of the city or town in which the association was formed.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed $125 a month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R.C.M. 1921; amd. Sec. 15, Ch. 58, L. 1927; re-en. Sec. 5133, R.C.M. 1935; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch. 36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974; amd. Sec. 1, Ch. 47, L. 1975; amd. Sec. 11, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1926; amd. Sec. 2, Ch. 446, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (3), increased monthly disability pension for volunteer firefighters from $75 to $125.

Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-11-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of his death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-11-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-11-604. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least $200. In the case of volunteer firefighters, the pension may not exceed $75 per month.

(4) A pension may be paid to the surviving spouse only so long as such spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to receive a service pension as provided for by 19-11-602 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 19-11-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18.

History: **En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R.C.M. 1921; amd. Sec. 16, Ch. 58, L. 1927; re-en. Sec. 5134, R.C.M. 1935; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974; amd. Sec. 5, Ch. 535, L. 1975; amd. Sec. 12, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.**

Cross-References

PERS — designation of beneficiary, 19-3-1301.

Teachers' retirement — allowances for death of member, 19-4-1001.

Judges' retirement — payments upon employment-related death, 19-5-603.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — payment of disability and death benefits, 19-12-506.

Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-11-606. Supplement to certain pensions. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-11-512, there is a tax of 1 ½ % on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the state special revenue fund. The auditor shall pay claims as provided in subsection (2) of this section and 19-13-1006. As those persons who are to receive the fund die, the tax shall be reduced proportionately, and when no eligible person, as defined by subsection (2) and 19-13-1006, survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed

$75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the state special revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year.

History: En. 11-1927.2 by Sec. 1, Ch. 32, L. 1975; amd. Sec. 14, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.2; amd. Sec. 3, Ch. 296, L. 1979; amd. Sec. 60, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

1981 Amendment: Added "and 19-13-1006" whenever it appears in the section; deleted "in the case of a municipality other than a city of the first or second class" after "the state auditor shall issue from the earmarked revenue fund and deliver" near the beginning of (2)(a); and deleted "or, in the case of a city of the first or second class, to the board of investments to be credited to the account of the fire department relief association" after "to the treasurer of the respective city or town" in the middle of (2)(a).

Cross-References

PERS — adjustment of allowance for certain members, 19-3-905.

Teachers' retirement — increase in allowances of certain retirees, 19-4-707.

Police retirement — statewide plan — supplement to certain pensions, 19-9-1007.

Police retirement — local funds — supplement to certain pensions, 19-10-506.

Firefighters' unified retirement — supplement to certain retirement allowances, 19-13-1006.

19-11-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate.

History: En. Sec. 1, Ch. 276, L. 1973; amd. Sec. 13, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.1.

Cross-References

Benefits tax exempt, 15-30-111.

PERS — designation of beneficiary, 19-3-1301.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — death benefits, 19-5-603, 19-5-604.

Highway patrol retirement — death benefits, 19-6-603, 19-6-604.

Sheriffs' retirement — death benefits, 19-7-603, 19-7-604.

Game wardens' retirement — death benefits, 19-8-703, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — payment of disability and death benefits, 19-12-506.

Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.

19-11-608 through 19-11-610 reserved.

19-11-611. Procedure — applying for and collecting benefits. (1) All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance, and claimant shall have the right to appeal to the association in the event the claim be disallowed.

(2) All claims shall be paid by warrant, duly authorized, drawn by the secretary and countersigned by the president of the association. On presentation of the warrant, the treasurer shall pay it out of the disability and pension fund.

History: (1)En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; Sec. 11-1915, R.C.M. 1947; (2)En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; Sec. 11-1928, R.C.M. 1947; R.C.M. 1947, 11-1915(part), 11-1928(2).

Cross-References

PERS — election of optional death benefit, 19-3-1203.

Volunteer Firefighters' Compensation Act — procedure for claiming death benefit, 19-12-503.

Firefighters' unified retirement — application for service retirement, 19-13-703.

19-11-612. Protection of benefits from legal process — nonassignability. Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R.C.M. 1921; re-en. Sec. 5136, R.C.M. 1935; amd. Sec. 16, Ch. 157, L. 1977; R.C.M. 1947, 11-1929; amd. Sec. 30, Ch. 114, L. 1979.

Cross-References

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Police retirement — local funds — protection of benefits from legal process, 19-10-504.

Firefighters' unified retirement — protection of benefits from legal process — unassignability, 19-13-1004.

Execution of judgment, Title 25, ch. 13.

CHAPTER 12

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Part 1 — General Provisions

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19-12-501. Eligibility for disability and death benefits.
19-12-502. Procedure for claiming disability benefits.
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19-12-505. Death benefit.
19-12-506. Payment of disability and death benefits.

Chapter Cross-References

Municipal fire departments, Title 7, ch. 33, part 41.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Firefighters' Unified Retirement System, Title 19, ch. 13.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Firefighters' unified retirement — general provisions, Title 19, ch. 13, part 1.

19-12-101. Short title. This chapter shall be known and may be cited as the "Volunteer Firefighters' Compensation Act".

History: En. Sec. 1, Ch. 65, L. 1935; re-en. Sec. 5158.1, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.

19-12-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Board" means the public employees' retirement board provided for in 2-15-1009.

(2) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(3) The fiscal year begins on July 1 and ends on June 30 of each year.

(4) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' pension trust fund.

History: (1) thru (3), (5)En. 11-2020.1 by Sec. 19, Ch. 157, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2020.1, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; Sec. 11-2022, R.C.M. 1947; R.C.M. 1947, 11-2020.1, 11-2022(5)(d); amd. Sec. 1, Ch. 57, L. 1983; amd. Sec. 19, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 57 substituted "board provided for in 2-15-1009" for "board of the public employees' retirement system" in (1); deleted former (2), which read: "Division means the division of workers' compensation of the department of labor and industry."

Chapter 282 substituted "pension trust fund" for "compensation account in the agency fund" in (4).

19-12-103. Payments to volunteer fire companies maintaining group insurance. To encourage and aid volunteer fire companies to maintain group insurance for benefits on account of the death of or injury incurred by members while in the performance of duties as volunteer firefighters, $75 per year for each mobile unit of firefighting equipment, not exceeding two units for any one company, shall be paid by the board from the volunteer firefighters' fund to each volunteer fire company maintaining such insurance or to the organization or agency maintaining such insurance for a volunteer fire company.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(4); amd. Sec. 2, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "board" for "division".

Cross-References

Group insurance for firefighters — funding, 7-33-4130.

Franchise disability insurance, 33-22-401.

19-12-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies such statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 12, Ch. 65, L. 1935; re-en. Sec. 5158.12, R.C.M. 1935; amd. Sec. 30, Ch. 157, L. 1977; R.C.M. 1947, 11-2031; amd. Sec. 31, Ch. 114, L. 1979.

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Firefighters' retirement — theft from funds, 19-11-207.

Firefighters' unified retirement — penalty for fraud, 19-13-109.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

19-12-105. Duties of volunteer firefighters. The duties of a volunteer firefighter include any activity authorized by an officer of the fire company relating to travel to, participation in, and return from calls for fire protection, fire company meetings, training, medical assistance, search and rescue assistance, public service activities, such as parades, and calls for assistance to protect individual or public health and safety.

History: En. Sec. 2, Ch. 49, L. 1983.

Part 2

Administration of Fund

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — statewide plan — administration of plan, Title 19, ch. 9, part 2.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund — all municipalities, Title 19, ch. 11, part 2.

Firefighters' unified retirement — administration of plan, Title 19, ch. 13, part 2.

19-12-201. Administration of chapter. The board shall administer the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, and all payments made under 19-12-103, 19-12-405, 19-12-407, and 19-12-506 shall be made by warrants drawn by the board.

History: En. Sec. 7, Ch. 65, L. 1935; re-en. Sec. 5158.7, R.C.M. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 26, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2026; amd. Sec. 3, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendment: Consolidated administration of both the Volunteer Firefighters' Compensation Act and their pension plan under the Public Employees' Retirement Board by substituting present language for "(1) Except as provided in subsection (2), the division shall administer the Volunteer Firefighters' Compensation Act, and all payments made under 19-12-103 and 19-12-506 shall be made by warrants drawn by the division.

(2) The board shall administer the volunteer firefighters' pension plan, and all payments made under 19-12-405 and 19-12-407 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before the 15th day after the close of the fiscal year, the division shall notify the board in writing of

the balance remaining in the volunteer firefighters' fund as of the end of the fiscal year."

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Authority to invest funds in obligation of housing authority, 7-15-4505.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

PERS — contracts with political subdivisions, Title 19, ch. 3, part 2.

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-12-202. Reports of board. (1) The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, with such suggestions or recommendations as it may consider of value for public information.

(2) Copies of all such reports shall be made available by the board to the chief or other representative of any volunteer fire company or companies which may at any time request them.

History: **En. Sec. 10, Ch. 65, L. 1935; re-en. Sec. 5158.10, R.C.M. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967; amd. Sec. 28, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2029; amd. Sec. 4, Ch. 57, L. 1983.**

Compiler's Comments

1983 Amendment: Throughout section, substituted "board" for "division" or "public employees' retirement system"; deleted former (1) which read: "The division shall, at the time specified in 39-71-210 for making the report therein required, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act, with such suggestions or recommendations as it may consider of value for public information."; and in (1), inserted "Volunteer Firefighters' Compensation Act and the" before "volunteer firefighters' pension plan".

Cross-References

PERS — report by Department of Administration to Governor, 19-3-306.

PERS — employers to give Board monthly report and other information, 19-3-307.

19-12-203. Rules to be made by board. The board shall make such rules as it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, not inconsistent with the provisions thereof.

History: **En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(1); amd. Sec. 5, Ch. 57, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "board" for "division and the board"; and after "Volunteer Firefighters' Compensation Act" inserted "and the volunteer firefighters' pension plan".

Cross-References

PERS — powers and duties of Board, 19-3-304.

19-12-204. Office supplies to be a charge against the fund. Necessary expenses of the board for office supplies, stationery, and forms in connection with the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are a charge against the fund. The board shall draw from the fund through warrants at such intervals as it considers proper to pay these expenses.

History: **En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(2); amd. Sec. 6, Ch. 57, L. 1983.**

Compiler's Comments

1983 Amendment: Throughout section, substituted "board" for "division" or "public employees' retirement system"; inserted "and the volunteer firefighters' pension plan"; substituted last sentence for "The public employees' retirement system shall draw from the fund through warrants executed by the division upon the request of the public employees' retirement system, at such intervals as the board considers proper."

Part 3

Contributions to Fund

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.

19-12-301. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 19-11-512, computed before the amounts provided for by 19-11-512 and 19-13-604 are deducted. The moneys shall be used for the payment of claims and administrative costs as provided in this chapter.

History: En. Sec. 11, Ch. 65, L. 1935; re-en. Sec. 5158.11, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963; amd. Sec. 2, Ch. 204, L. 1975; amd. Sec. 4, Ch. 95, L. 1977; amd. Sec. 29, Ch. 157, L. 1977; amd. Sec. 3, Ch. 480, L. 1977; R.C.M. 1947, 11-2030; amd. Sec. 1, Ch. 313, L. 1981; amd. Sec. 61, Ch. 566, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 313 substituted "computed before the amounts provided for by 19-11-512 are deducted" for "computed after the amounts provided for by 19-11-512 have first been deducted".

Chapter 566 added "and 19-13-604" in the middle of the section.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

Ex officio Commissioner of Insurance, 2-15-1903.

Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-11-512.

Insurance premium tax, 33-2-705.

19-12-302. Earnings to be part of moneys. All earnings made by moneys received under 19-12-301 by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; re-en. Sec. 5158.9, R.C.M. 1935; amd. Sec. 194, Ch. 147, L. 1963; amd. Sec. 3, Ch. 95, L. 1977; R.C.M. 1947, 11-2028.

Part 4

Pension Benefits

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Police retirement — local funds — eligibility for retirement benefits, Title 19, ch. 10, part 4.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), he must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company when he reaches that age.

(b) An active member of a volunteer fire company whose duty-related injury results in a permanent, total disability as defined in 39-71-116(13) is eligible to receive a partial pension regardless of his age calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(3) During each of the years for which he claims credit under subsection (1), he must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of his volunteer fire company.

(4) Effective July 1, 1965, no volunteer firefighter may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in serviceable condition of a value of $2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) He must have ceased to be an active member of any volunteer fire company, and if he applies for and receives pension benefits hereunder, he will not thereafter be eligible to become an active member of any volunteer fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(2); amd. Sec. 1, Ch. 177, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "Except as provided in subsection (2)(b)" at the beginning of (2)(a); added subsection (2)(b) relating to partial pension for permanent, total disability.

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — service pension, 19-11-602.

Firefighters' unified retirement — eligibility for service retirement, 19-13-701.

19-12-402. Certificate of eligibility. On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the board a certificate, subscribed and verified under oath, stating whether or not his company qualified under 19-12-401(4) during the preceding fiscal year and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-12-401(3). The verified certificate shall be maintained in a permanent file by the board for the purpose of establishing eligibility for participation in the volunteer firefighters' pension plan and shall be open for inspection as a public record.

History: En. 11-2020.2 by Sec. 20, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.2; amd. Sec. 7, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "board" for "public employees' retirement system" twice.

19-12-403. Procedure for claiming pension benefits. (1) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the board upon a form to be provided therefor by the board. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(2) The claim must contain:

(a) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(b) the fiscal year during which eligibility will commence; and

(c) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(3) The board may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 19-12-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of such service.

(4) If the claim is properly filed and the claimant is found by the board to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim.

History: **En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(2); amd. Sec. 8, Ch. 57, L. 1983.**

Compiler's Comments

1983 Amendment: Throughout section, substituted "board" for "public employees' retirement system".

Cross-References

PERS — powers and duties of Board, 19-3-304.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Police retirement — statewide plan — application for service retirement, 19-9-803.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

Firefighters' unified retirement — application for service retirement, 19-13-703.

19-12-404. Pension benefits. (1) Each person who meets the requirements set forth in 19-12-401 or, in the case of a beneficiary, 19-12-405(1) and who has completed and filed a claim as provided in 19-12-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments shall be computed each year in the following manner:

(a) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $1 million, the board shall set aside the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the board of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year.

(b) The total pension payable to a qualified claimant under this section may not exceed $200 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $200 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter shall be treated collectively as one claimant.

(3) If the amount set aside is sufficient to pay each qualified claimant at least $20 per month throughout the succeeding fiscal year, the pension shall be paid monthly on or before the last day of each month. If the amount set aside is not sufficient to pay each qualified claimant at least $20 per month, each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December 15 of that year.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(5)(a) thru (5)(c); amd. Sec. 1, Ch. 24, L. 1983; amd. Sec. 9, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 24, in (2)(b), increased the maximum pension from $100 to $200.

Chapter 57, in (2)(a), substituted "board" for "division" and for "public employees' retirement system" and after "board shall set aside" deleted "and pay over to the public employees' retirement system".

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-804.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Firefighters' unified retirement — amount of retirement allowance, 19-13-704.

19-12-405. Pension benefits to surviving spouse or children. (1) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death after February 27, 1971, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least $2,000; or

(d) the death of a volunteer firefighter after February 27, 1971, and after he has qualified for partial participation but before he has received payments totaling the proportion of $2,000 determined under the formula prescribed in 19-12-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of $2,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of $2,000 determined under the formula prescribed in 19-12-401(1)(b)

has been paid upon the pension, including any payments made to the volunteer firefighter before his death.

History: **En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(3), (4).**

Cross-References

PERS — designation of beneficiary, 19-3-1301.

Judges' retirement — nomination of beneficiary, 19-5-602.

Highway patrol retirement — nomination of beneficiary, 19-6-602.

Sheriffs' retirement — designation of beneficiary, 19-7-602.

Game wardens' retirement — nomination of beneficiary, 19-8-702.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Firefighters' unified retirement — survivorship allowance, 19-13-902.

19-12-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: **En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(5).**

Cross-References

Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.

19-12-407. Payment of pension benefits. All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1).

History: **En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(2); amd. Sec. 10, Ch. 57, L. 1983; amd. Sec. 20, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 57 substituted "board" for "public employees' retirement system".

Chapter 282 substituted "pension trust fund" for "agency fund".

Cross-References

PERS — management of allowance payments, Title 19, ch. 3, part 14.

19-12-408. Medical review of certain disability retirees. The board may require the recipient of a partial pension resulting from a permanent, total disability to undergo periodic medical examinations. The examinations must be made by a physician or surgeon at the recipient's residence or another place mutually agreed on. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient remains permanently and totally disabled.

History: **En. Sec. 2, Ch. 177, L. 1981.**

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of allowance, 19-13-804.

19-12-409. Cancellation and reinstatement of certain pensions. (1) The board may cancel a recipient's partial pension resulting from a permanent, total disability if:

(a) the board determines that the recipient is no longer permanently and totally disabled as provided in 19-12-408;

(b) the recipient refuses to submit to a medical examination under 19-12-408; or

(c) the recipient engages in a gainful occupation during the previous year and the compensation earned by him in that year exceeds $5,500.

(2) The cancellation of a pension under this section does not prejudice any right of a firefighter to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

(3) If a former recipient's earnings in any year after the cancellation of his pension under subsection (1)(c) are less than $5,500, his pension must be reinstated.

History: **En. Sec. 3, Ch. 177, L. 1981.**

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Police retirement — statewide plan — disability — reinstatement upon termination of allowance, 19-9-905.

Firefighters' unified retirement — reinstatement upon termination of allowance, 19-13-805.

Part 5

Disability and Death Benefits

Part Cross-References

PERS —disability retirement, Title 19, ch. 3, part 10.

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

Firefighters' unified retirement — disability retirement, Title 19, ch. 13, part 8.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-12-501. Eligibility for disability and death benefits. In order to qualify for benefits under 19-12-504 and 19-12-505, a firefighter must, at the time the injury or sickness for which benefits are claimed was incurred or, in the case of a claim under 19-12-505, at the time of death, have been an enrolled active member of a fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 1, Ch. 233, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(1).

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.

PERS — eligibility for death benefits, 19-3-1201.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.

Police retirement — local funds — eligibility for disability retirement, 19-10-402.

Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.

19-12-502. Procedure for claiming disability benefits. (1) A firefighter claiming benefits under 19-12-504 must file his claim with the board on a form to be provided by the board. The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the board within 1 year from the date of disability.

(2) The claim must contain:

(a) the name and address of the claimant;

(b) the date, place, and manner of incurring of disability;

(c) the name and address of the attending physician or surgeon and/or nurse, if any;

(d) the dates of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse;

(e) the affidavit of the attending physician or surgeon as to the nature of the disability, the number and dates of visits, and the charges;

(f) if confined in a hospital, the affidavit of a person in charge stating the nature of the disability, the dates of confinement, and the expenses incurred while so confined;

(g) the affidavit of the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the claimant was, at the date of disability, an active enrolled member of the company, and that the disability was incurred in the line of duty as defined in 19-12-105;

(h) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(1); amd. Sec. 3, Ch. 49, L. 1983; amd. Sec. 11, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 49 inserted "as defined in 19-12-105" at end of (1)(g).

Chapter 57, in (1), substituted "board" for "division" twice and after "form to be provided" substituted "by the board" for "therefor".

Cross-References

PERS — application for disability retirement allowance, 19-3-1005.

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

19-12-503. Procedure for claiming death benefit. Anyone claiming the benefit provided for in 19-12-505 must file his claim with the board upon a form to be provided by the board, in accordance with such rules as the board may make.

History: En. 11-2024.1 by Sec. 24, Ch. 157, L. 1977; R.C.M. 1947, 11-2024.1; amd. Sec. 12, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "board" for "division" three times; and after "provided" deleted "therefor".

Cross-References

Firefighters' retirement — procedure — applying for and collecting benefits, 19-11-611.

19-12-504. Disability benefits. (1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter, as defined in 19-12-105, when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed $25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed $1,500. The artificial member so furnished shall be replaced every 5 years, if necessary.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; R.C.M. 1947, 11-2022(1), (2); amd. Sec. 4, Ch. 49, L. 1983; amd. Sec. 13, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 49, in (1), inserted "as defined in 19-12-105" after "duties as a firefighter".

Chapter 57, in (2), substituted "board" for "division".

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — amount of retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Firefighters' unified retirement — amount of disability retirement allowance, 19-13-803.

19-12-505. Death benefit. To aid in defraying the funeral expenses of a firefighter covered under this chapter whose death occurs in the line of duty, an amount not to exceed the actual necessary and reasonable expenses or $1,500, whichever is less, shall be allowed.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971;

amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(3).

Cross-References

PERS — amount of death benefit, 19-3-1202.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — death benefits, 19-5-603, 19-5-604.

Highway patrol retirement — death benefits, 19-6-603, 19-6-604.

Sheriffs' retirement — death benefits, 19-7-603, 19-7-604.

Game wardens' retirement — death benefits, 19-8-703, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Firefighters' unified retirement — death and survivor benefits, Title 19, ch. 13, part 9.

19-12-506. Payment of disability and death benefits. When a claim under 19-12-504 or 19-12-505 is received by the board and is found to be in compliance with 19-12-502 or, in the case of a claim under 19-12-505, with 19-12-503, the board must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the provider of funeral services, as applicable.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(1); amd. Sec. 14, Ch. 57, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "board" for "division" twice.

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — death benefits, 19-5-603, 19-5-604.

Highway patrol retirement — death benefits, 19-6-603, 19-6-604.

Sheriffs' retirement — death benefits, 19-7-603, 19-7-604.

Game wardens' retirement — death benefits, 19-8-703, 19-8-704.

Police retirement — statewide plan — death benefits, 19-9-911.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

CHAPTER 13

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

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Chapter Cross-References

Municipal fire departments, Title 7, ch. 33, part 41.

Public Employees' Retirement System, Title 19, ch. 3.

Teachers' retirement, Title 19, ch. 4.

Judges' retirement, Title 19, ch. 5.

Highway patrol retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Game wardens' retirement, Title 19, ch. 8.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Part 1

General Provisions

Part Cross-References

PERS — general provisions, Title 19, ch. 3, part 1.

Teachers' retirement — general provisions, Title 19, ch. 4, part 1.

Judges' retirement — general provisions, Title 19, ch. 5, part 1.

Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.

Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.

Game wardens' retirement — general provisions, Title 19, ch. 8, part 1.

Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.

Police retirement — local funds — general provisions, Title 19, ch. 10, part 1.

Firefighters' retirement — general provisions, Title 19, ch. 11, part 1.

Volunteer Firefighters' Compensation Act — general provisions, Title 19, ch. 12, part 1.

19-13-101. Short title. This chapter may be cited as the "Montana Firefighters' Unified Retirement Act".

History: **En. Sec. 1, Ch. 566, L. 1981.**

19-13-102. Purpose — application of prior law. (1) Because cities other than those of the first or second class currently have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities other than those of the first or second class that wish to adopt it. The second, created by this chapter, applies to cities of the first or second class and those other cities that wish to adopt it. The purpose of the second system is to provide equity and security for retired firefighters who served cities of the first and second class and other cities electing to join the plan by creating a centrally administered system responsible for continuing all retirement payments from the assets of the system.

(2) Title 19, chapter 11, may not be applied in any way to a city operating under the plan created by this chapter except as otherwise provided.

History: **En. Sec. 2, Ch. 566, L. 1981.**

Cross-References

Firefighters' retirement, Title 19, ch. 11.

19-13-103. Retirement system established. A firefighters' unified retirement system is established and governed by the provisions of this chapter.

History: En. Sec. 3, Ch. 566, L. 1981.

19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Board" means the retirement board described in 2-15-1009.

(3) "Credited service" means the aggregate of a member's prior service and membership service.

(4) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(5) "Employer" means any city that is of the first or second class or that elects to join this plan under 19-13-108.

(6) "Final average salary" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of his active service or, if he has not been a member that long, over the period of his membership.

(7) "Firefighter" means a person employed as a full- or part-paid firefighter by an employer.

(8) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(9) "Fund" means the pension trust fund in the state treasury system designated for the use of the plan.

(10) "Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter.

(11) "Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(13) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of credited service.

(14) "Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(15) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(16) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for his service as a firefighter.

(17) "Plan" means the municipal firefighters' retirement system created by this chapter.

(18) "Prior plan" means the fire department relief association plan of a city that elects to join the plan under 19-13-108 or the fire department relief association plan of a city of the first or second class.

(19) "Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan.

(20) "Retirement allowance" means the monthly benefit payable after service or disability retirement.

(21) "Retirement date" means the date on which the first payment of the retirement or disability benefits of a member or a beneficiary is payable.

(22) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(23) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter.

History: En. Sec. 4, Ch. 566, L. 1981; amd. Sec. 5, Ch. 186, L. 1983; amd. Sec. 21, Ch. 282, L. 1983; amd. Sec. 1, Ch. 585, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 186 inserted (22).

Chapter 282, in (9), changed "agency account" to "pension trust fund".

Chapter 585 inserted (14)(b)(i); and in (14)(b)(ii) inserted "if that city does not employ a full-paid firefighter", at beginning of subsection, after "paid" inserted "on July 1 of each year", after "confirmed" changed "active" to "full-paid", and after "second class" deleted "on July 1 of each year".

19-13-105. Participation in plan by first- and second-class cities. Cities of the first and second class that employ full-paid firefighters must participate in the plan. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it must continue to participate in the plan as long as it has retired firefighters or beneficiaries eligible to receive retirement benefits.

History: **En. Sec. 5, Ch. 566, L. 1981.**

Cross-References

Classification of municipalities, 7-1-4111.

Municipal fire departments, Title 7, ch. 33, part 41.

19-13-106. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, must be transferred to the account provided for in 19-13-501. The board shall determine the amounts to be apportioned to each account on April 29, 1981, and the department of administration and the boards of trustees of the fire department relief associations shall transfer such amounts to the appropriate accounts on July 1, 1981.

History: **En. Sec. 6, Ch. 566, L. 1981.**

Cross-References

Retention of firefighters' rights when local government consolidated, 19-11-107.

19-13-107. Effect on members of prior plans. A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this plan retains all rights and benefits accrued under a prior plan.

History: **En. Sec. 7, Ch. 566, L. 1981.**

Cross-References

Retention of firefighters' rights when local government consolidated, 19-11-107.

19-13-108. Election to join plan — transfer of assets. (1) Except for cities with only volunteer firefighters, a city other than one described in 19-13-105 may, after July 1, 1981, elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this chapter. The fire department relief association of the city may pass a resolution to the same effect. Upon the enactment of the ordinance and passage of the resolution, the provisions of this chapter become applicable to the city. Any city that enacts such an ordinance and in which the fire department relief association passes such a resolution shall send certified copies thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by its fire department relief association. The value of the securities shall be determined by the board.

(2) The board of trustees of the fire department relief association as of the effective date of the election shall certify the proportion, if any, of the funds of the association that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Following the transfer of the cash and securities required by subsection (1) and the certification required by this subsection, the fire department relief association may conclude its affairs. The shares of the members shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made

during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-13-503.

History: **En. Sec. 8, Ch. 566, L. 1981.**

19-13-109. Penalty for fraud. (1) No person may knowingly make any false statement or permit to be falsified any records of the plan in an attempt to defraud the plan.

(2) A person who violates any of the provisions of subsection (1) is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a term not exceeding 6 months, or both.

History: **En. Sec. 9, Ch. 566, L. 1981.**

Cross-References

Teachers' retirement — penalty for fraud, 19-4-105.

Judges' retirement — penalty for fraud, 19-5-104.

Highway patrol retirement — penalty for fraud, 19-6-104.

Sheriffs' retirement — penalty for fraud, 19-7-104.

Game wardens' retirement — penalty for fraud, 19-8-104.

Police retirement — statewide plan — penalty for fraud, 19-9-108.

Firefighters' retirement — theft from funds, 19-11-207.

Volunteer Firefighters' Compensation Act — penalty for false statements or claims, 19-12-104.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

19-13-110. Termination of participation in plan or reduction of employer contributions. (1) If a city voluntarily terminates its contributions in the plan or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of plan members, the board shall request as part of the actuarial valuation required in 19-13-504 an actuarial investigation of the funding status of the city.

(2) Based on the actuarial investigation, the board may request and the city shall pay annually an amount needed to provide adequate funding for the city. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, a city making payments as provided in subsection (2) may request the board to review the city's funding status relative to the annual payments. As a result of the review, the board may adjust the payments.

History: **En. Sec. 1, Ch. 468, L. 1983.**

Part 2

Administration of Plan

Part Cross-References

PERS — administration of retirement system, Title 19, ch. 3, part 3.

Teachers' retirement — administration of system, Title 19, ch. 4, part 2.

Judges' retirement — administration, Title 19, ch. 5, part 2.

Highway patrol retirement — administration, Title 19, ch. 6, part 2.

Sheriffs' retirement — administration, Title 19, ch. 7, part 2.

Game wardens' retirement — administration, Title 19, ch. 8, part 2.

Police retirement — statewide plan — administration of plan, Title 19, ch. 9, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

19-13-201. Firemen's association to advise board. The Montana state firemen's association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of this chapter. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits for members of the plan.

History: En. Sec. 10, Ch. 566, L. 1981.

19-13-202. Power and duties of board. The powers and duties of the board include:

(1) administering, interpreting, and enforcing the provisions of this chapter;

(2) establishing uniform rules to administer the provisions of this chapter;

(3) determining the conditions under which persons may become members of and receive benefits under the retirement system; and

(4) determining allowances for retirement and disability under this chapter.

History: En. Sec. 11, Ch. 566, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — administration by Teachers' Retirement Board, 19-4-201.

Judges' retirement — powers and duties of Board, 19-5-201.

Highway patrol retirement — Board to make rules, 19-6-201.

Sheriffs' retirement — functions of Board, 19-7-201.

Game wardens' retirement — Board to make rules, 19-8-201.

Police retirement — statewide plan — powers and duties of Board, 19-9-201.

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Firefighters' retirement — management of association, 19-11-401.

Volunteer Firefighters' Compensation Act — rules to be made by Division of Workers' Compensation and Board, 19-12-203.

19-13-203. Department to provide forms — information from employers. The department of administration shall prepare such forms as it finds necessary for the employers to complete to provide all the information necessary to administer this chapter, and the cities shall give the department of administration all data necessary to carry out the purpose and intent of this chapter.

History: En. Sec. 12, Ch. 566, L. 1981.

Cross-References

Department of Administration, 2-15-1001.

PERS — employers to give Board monthly report and other information, 19-3-307.

Police retirement — statewide plan — Department of Administration to provide forms — information from employers, 19-9-202.

19-13-204. Administrative expenses. (1) The expense of administering this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system pension trust fund.

History: En. Sec. 13, Ch. 566, L. 1981; amd. Sec. 22, Ch. 282, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, substituted "pension trust fund" for "account in the agency fund".

Cross-References

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Judges' retirement — administrative expenses, 19-5-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — expenses of administration, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Volunteer Firefighters' Compensation Act — office supplies to be a charge against the fund, 19-12-204.

Part 3

Membership

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

19-13-301. Active membership. (1) A full-paid firefighter becomes an active member under the plan:

(a) on the first day of his employment by an employer;

(b) on July 1, 1981, if he is employed by an employer on that date; or

(c) in the case of an employer that elects to join the plan as provided in 19-13-108, on the effective date of such election if he is employed by the employer on that date.

(2) Upon becoming eligible for membership, he shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the plan by filing a membership application with the board.

History: En. Sec. 14, Ch. 566, L. 1981.

Cross-References

PERS — membership, 19-3-401.

Teachers' retirement — active membership, 19-4-302.

Judges' retirement — membership, 19-5-301.

Highway patrol retirement — membership, 19-6-301.

Sheriffs' retirement — membership, 19-7-301.

Game wardens' retirement — membership, 19-8-301.

Police retirement — statewide plan — active membership, 19-9-301.

19-13-302. Ineligibility for other retirement plans. No active member is eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on his behalf while he is eligible to be covered by this plan.

History: En. Sec. 15, Ch. 566, L. 1981; amd. Sec. 4, Ch. 661, L. 1983.

Compiler's Comments

1983 Amendment: Deleted "for firefighters" after "any other mandatory retirement plan".

Cross-References

Sheriffs' retirement — ineligibility for membership in Public Employees' Retirement System, 19-7-302.

Game wardens' retirement — ineligibility for Public Employees' Retirement System — transfer of membership, 19-8-302.

Police retirement — statewide plan — ineligibility for other retirement plans, 19-9-302.

Firefighters' retirement, Title 19, ch. 11.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

19-13-303. Inactive membership. (1) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date he ceases to be employed by an employer and becomes entitled to a retirement allowance;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date he ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(2) An inactive member becomes an active member on the day he returns to active duty with an employer. Upon again becoming an active member, his retirement allowance, if any, shall cease being paid to him until he again becomes an inactive member.

History: **En. Sec. 16, Ch. 566, L. 1981.**

Cross-References

Teachers' retirement — inactive membership, 19-4-303.

Police retirement — statewide plan — inactive membership, 19-9-303.

19-13-304. Termination of employment prior to retirement. (1) Except as provided in subsection (2), an active member may withdraw the amount of his member contributions, plus regular interest as determined by the board, in lieu of all other benefits under the plan upon his termination of employment prior to his retirement. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 19-13-902.

(2) If a member has 10 years or more of creditable service before termination, he may keep his contributions on deposit and be eligible for a service retirement at age 50.

History: **En. Sec. 17, Ch. 566, L. 1981.**

Cross-References

PERS — termination of membership, 19-3-406.

Teachers' retirement — membership termination, 19-4-304.

Police retirement — statewide plan — termination of employment prior to retirement, 19-9-304.

19-13-305. Cessation of membership. A member shall cease to be a member upon the occurrence of the earlier of the following:

(1) the date he withdraws his member contributions in lieu of all other benefits under the plan;

(2) the date of his death.

History: **En. Sec. 18, Ch. 566, L. 1981.**

Cross-References

Police retirement — statewide plan — cessation of membership, 19-9-305.

Part 4

Credited Service

Part Cross-References

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Judges' retirement — membership and service allowance, Title 19, ch. 5, part 3.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

19-13-401. Credited service to be cumulative. A member is entitled to benefits upon the entire period of his credited service without regard to the number of employers by whom he was employed or the number of periods of his employment so that no duplication of credited service occurs.

History: En. Sec. 19, Ch. 566, L. 1981.

Cross-References

Teachers' retirement — creditable service, 19-4-401.

Judges' retirement — service credits, 19-5-302.

Police retirement — statewide plan — credited service to be cumulative, 19-9-401.

19-13-402. Military service. (1) A firefighter inducted into the armed forces of the United States may:

(a) continue his payments into the account during his military service; or

(b) within 2 years after his return to active firefighter status, contribute to the account an amount equal to the membership contributions that he would have made had he been a firefighter during the time of his military service.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a firefighter.

History: En. Sec. 20, Ch. 566, L. 1981.

Cross-References

PERS — absence in military service, 19-3-502.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-4-404.

Judges' retirement — military service, 19-5-304.

Highway patrol retirement — military service, 19-6-303.

Sheriffs' retirement — military service, 19-7-303.

Game wardens' retirement — military service, 19-8-304.

Police retirement — statewide plan — military service, 19-9-402.

Police retirement — local funds — credit for military service, 19-10-405.

19-13-403. Election to qualify previous military service. (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. Military service purchased under this section may not be used in determining eligibility for a service retirement requiring a minimum of 10 years of service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

History: **En. Sec. 21, Ch. 566, L. 1981.**

Cross-References

PERS — election to qualify military service for full credit, 19-3-503.

Highway patrol retirement — election to qualify military service for full credit, 19-6-304.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Police retirement — local funds — election to qualify previous military service, 19-10-406.

19-13-404. Qualification of service from other Montana public retirement systems. (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, sheriffs', municipal police officers', or game wardens' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-13-202 upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: **En. Sec. 6, Ch. 331, L. 1983.**

Part 5

Retirement Account — Creation and Management

Part Cross-References

PERS — financial management, Title 19, ch. 3, part 6.

Teachers' retirement — management of funds, Title 19, ch. 4, part 5.

Game wardens' retirement — creation and management of retirement account, Title 19, ch. 8, part 4.

Police retirement — statewide plan — financial management, Title 19, ch. 9, part 5.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 10, part 2.

Firefighters' retirement — management and protection of fund — all municipalities, Title 19, ch. 11, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 12, part 2.

19-13-501. Retirement fund. Beginning July 1, 1981, a pension trust fund shall be maintained on behalf of the plan. The state treasurer is the custodian of the fund subject to the exclusive administrative control of the board.

History: **En. Sec. 22, Ch. 566, L. 1981; amd. Sec. 23, Ch. 282, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence, substituted "pension trust fund" for "account in the agency fund"; and in last sentence, changed "account" to "fund".

Cross-References

Fund structure, 17-2-102.

Sheriffs' retirement — creation and management of Sheriffs' Retirement Account, 19-7-401.

Game wardens' retirement — creation of State Game Wardens' Retirement Account, 19-8-401.

Police retirement — statewide plan — retirement account, 19-9-501.

19-13-502. Management of funds by department of administration. Except as otherwise provided in this chapter, the department of administration, through the administrator and the board of investments, shall administer, invest, account for, and treat the funds deposited with it under this chapter according to the rules addressing the public employees' retirement system, insofar as these rules are not inconsistent with those promulgated and adopted by the board. The contributions of the state, employers, and members paid to the administrator under this chapter may be commingled for investment purposes.

History: **En. Sec. 23, Ch. 566, L. 1981.**

Cross-References

Department of Administration, 2-15-1001.

PERS — management of fund, 19-3-601.

Teachers' retirement — financial administration of money, 19-4-501.

Sheriffs' retirement — creation and management of Sheriffs' Retirement Account, 19-7-401.

Game wardens' retirement — management of account, 19-8-402.

Police retirement — statewide plan — management of funds by Department of Administration, 19-9-502.

Firefighters' retirement — management of fund, 19-11-201.

Pension trusts — restrictive rules inapplicable, 70-1-411.

19-13-503. Unfunded liabilities. (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The administrator shall, on or before October 1, 1986, determine the excess and unfunded liability of each city participating in the plan created by this chapter. For each city determined by the administrator to have an excess and unfunded liability under a prior plan that, as of July 1, 1986, is not funded by sums on deposit or funds available for deposit with the administrator, the state auditor shall pay an additional sum over a period of time from the premium taxes on insurance risks enumerated in 19-11-512 to amortize each city's excess liability.

(3) If the administrator determines that the state auditor is paying an amount in excess of the amount necessary to amortize each city's liabilities under the prior plan and under this chapter, the administrator shall credit the accounts of the administrator for the excess payments.

(4) For each city with an unfunded liability, any portion of the member, the employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability.

History: En. Sec. 24, Ch. 566, L. 1981; amd. Sec. 3, Ch. 286, L. 1983; amd. Sec. 5, Ch. 661, L. 1983.

Compiler's Comments

1983 Amendments — Composite Section: Chapter 286, which substituted "1986" for "1984" in two places in (2), became effective on March 29, 1983.

Chapter 661, twice in (2), substituted "1986" for "1984"; following first sentence of (2) deleted "The determination must be negotiated between each city and the administrator."; inserted "For" at beginning of second sentence of (2); at end of (2) substituted "the administrator, the state auditor shall pay ... city's excess liability" for "the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by agreement between the city and the administrator."; and substituted (3) for "Each city determined by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for the excess payments." Chapter 661 became effective July 1, 1983.

Chapter 661 amended the duties of the administrator and date of evaluation of a plan effective approximately 3 months later than Ch. 286. However, as those duties and date of evaluation are prospective and must be accomplished or determined long after the effective date of both chapters, the differing effective dates appear inconsequential.

Cross-References

Police retirement — statewide plan — unfunded liabilities, 19-9-503.

19-13-504. Actuarial valuation. The board shall engage the services of a qualified actuary to conduct an actuarial valuation of the plan in each even-numbered year. It shall include the actuary's determination of the financial condition of the plan, the level of annual contributions required to maintain the plan on an actuarially sound basis, and, if applicable, the level of annual contributions required to amortize the excess and unfunded liabilities described in 19-13-503. A qualified actuary is one who is a member of the American academy of actuaries or of any organization considered by the board to have similar standards.

History: En. Sec. 25, Ch. 566, L. 1981.

Cross-References

PERS — employment of actuary — biennial investigation and valuation, 19-3-305.

Highway patrol retirement — Board to keep actuarial data, 19-6-202.

Game wardens' retirement — Board to keep actuarial data, 19-8-202.

Police retirement — statewide plan — actuarial valuation, 19-9-504.

19-13-505. Transfer of dormant member account. The board may, in its discretion, transfer member contributions to the employer's account if the member's contribution account has been dormant for a period of 10 years. No right of the member may be jeopardized by such a transfer, and the member contributions shall be transferred back to the member's name upon his subsequent reinstatement as an active member.

History: En. Sec. 26, Ch. 566, L. 1981.

Cross-References

PERS — transfer of dormant savings account, 19-3-604.

Teachers' retirement — transfer of dormant savings account, 19-4-503.

Judges' retirement — transfer of dormant savings account, 19-5-406.

Highway patrol retirement — transfer of dormant savings accounts, 19-6-407.

Sheriffs' retirement — transfer of dormant accumulated deductions, 19-7-407.

Game wardens' retirement — transfer of dormant accounts, 19-8-405.

Police retirement — statewide plan — transfer of dormant member account, 19-9-505.

Part 6

Contributions

Part Cross-References

PERS — employee contributions, Title 19, ch. 3, part 7.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — funds — contributions, Title 19, ch. 4, part 6.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Highway patrol retirement — retirement account — contributions, Title 19, ch. 6, part 4.

Sheriffs' retirement account — contributions, Title 19, ch. 7, part 4.

Game wardens' retirement — contributions to retirement account, Title 19, ch. 8, part 5.

Police retirement — statewide plan — employee contributions, Title 19, ch. 9, part 6.

Police retirement — statewide plan — employer and state contributions, Title 19, ch. 9, part 7.

Police retirement — local funds — contributions to funds, Title 19, ch. 10, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 11, part 5.

Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 12, part 3.

19-13-601. Member contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 7% of his monthly compensation for his services as a firefighter and shall report and remit on a monthly basis:

(a) 6% of the monthly compensation of each member to the administrator for deposit in the fund; and

(b) 1% of the monthly compensation of each member to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from the workers' compensation division during the period of disability.

History: En. Sec. 27, Ch. 566, L. 1981; (2)En. Sec. 1, Ch. 289, L. 1983.

Cross-References

PERS — member's contribution to be deducted, 19-3-701.

Teachers' retirement — annuity savings fund — member's contribution, 19-4-602.

Judges' retirement — member's contribution deducted from salary, 19-5-402.

Highway patrol retirement — member's contribution, 19-6-402.

Sheriffs' retirement — members' contributions deducted, 19-7-403.

Game wardens' retirement — member's contribution, 19-8-502.

Police retirement — statewide plan — member contributions, 19-9-601.

Police retirement — local funds — officer's contribution deducted from salary, 19-10-302.

Firefighters' retirement — contributions to fund, 19-11-501.

19-13-602. Vesting and withdrawal of contributions. A member is at all times fully vested in the deductions paid to the administrator and made from his compensation as a member or as a member of a prior plan standing to his credit and may, at his discretion, withdraw the full amount of these deductions upon his termination of employment in accordance with 19-13-304 and forfeit all rights and interest with respect to any benefits that would otherwise become payable under the plan.

History: En. Sec. 28, Ch. 566, L. 1981.

Cross-References

PERS — refund of member's contributions on termination of service, 19-3-703.

Teachers' retirement — withdrawal of accumulated contributions, 19-4-603.

Judges' retirement — refunds in case of resignation or discharge, 19-5-403.

Highway patrol retirement — refund of member's contribution, 19-6-403.

Game wardens' retirement — refund of member's contribution, 19-8-503.

Police retirement — statewide plan — vesting and withdrawal of contributions, 19-9-602.

Police retirement — local funds — refund of officer's contribution, 19-10-303.

Firefighters' retirement — refund of firefighter's contribution, 19-11-502.

19-13-603. Redeposit of amounts withdrawn upon reinstatement. (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments not to exceed 12 monthly or 24 semimonthly installments, an amount equal to the member contributions that he withdrew plus an amount equal to the interest that would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions.

History: En. Sec. 29, Ch. 566, L. 1981.

Cross-References

PERS — reinstatement after withdrawal of contributions, 19-3-704.

Sheriffs' retirement — reinstatement after withdrawal of contributions, 19-7-306.

Police retirement — statewide plan — redeposit of amounts withdrawn upon reinstatement, 19-9-603.

19-13-604. State contribution. The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-11-512. These payments shall be made annually to the administrator after the end of each fiscal year but no later than September 1 from the gross premium taxes after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year, and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, and to 22.98% effective July 1, 1985. As soon as practicable after receipt of the state contribution, the administrator shall deposit it with the state treasurer.

History: **En. Sec. 30, Ch. 566, L. 1981; amd. Sec. 6, Ch. 661, L. 1983.**

Compiler's Comments

1983 Amendment: Near end, inserted "and to 22.98% effective July 1, 1985" after "July 1, 1983".

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — state contribution, 19-9-702.

Police retirement — local funds — city's contribution to fund, 19-10-301.

Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-12-301.

Tax on insurance premiums, 33-2-705.

19-13-605. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. Effective July 1, 1981, the employer's contribution is 12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, and shall decrease to 13.02% effective July 1, 1985. All contributions are payable monthly to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer.

History: **En. Sec. 31, Ch. 566, L. 1981; amd. Sec. 7, Ch. 661, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted "and shall decrease to 13.02% effective July 1, 1985" after "July 1, 1983".

Cross-References

PERS — employer contributions, Title 19, ch. 3, part 8.

Teachers' retirement — pension accumulation fund — employer's contribution, 19-4-605.

Judges' retirement — contributions by state, 19-5-404.

Highway patrol retirement — state's contribution, 19-6-404.

Sheriffs' retirement — counties' contributions, 19-7-404.

Game wardens' retirement — state's contribution, 19-8-504.

Police retirement — statewide plan — employer contribution, 19-9-703.

Police retirement — local funds — city's contribution to fund, 19-10-301.

19-13-606. Taxing authority of employers. (1) For the purpose of making contributions required of a city under this chapter, whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

History: En. Sec. 32, Ch. 566, L. 1981.

Cross-References

Police retirement — statewide plan — taxing authority of employers, 19-9-704.

Firefighters' retirement — special tax levy for fund required, 19-11-503.

19-13-607. Other money credited as employer contributions. All gifts, bequests, and emoluments given to an employer or member for the benefit of the plan or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by his employer, shall be paid to the administrator. The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such amounts are employer contributions but are in addition to the amounts required by 19-13-605.

History: En. Sec. 33, Ch. 566, L. 1981.

Cross-References

Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.

Police retirement — local funds — gifts and money applied to fund, 19-10-304.

Part 7

Service Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Teachers' retirement — superannuation retirement, Title 19, ch. 4, part 8.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

19-13-701. Eligibility for service retirement — commencement of allowance. (1) The following members are eligible for service retirement:

(a) a member who has reached age 50 and has completed 10 years or more in the aggregate as a firefighter in any capacity or rank;

(b) a member who has reached mandatory retirement age under 19-13-702 regardless of his number of years of service.

(2) The retirement allowance must commence on the first day of the month following the member's last day of membership service.

History: En. Sec. 34, Ch. 566, L. 1981; amd. Sec. 7, Ch. 53, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Teachers' retirement — eligibility for superannuation retirement, 19-4-801.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Volunteer Firefighters' Compension Act — eligibility for pension benefits, 19-12-401.

19-13-702. Mandatory retirement. (1) An active member must retire on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 65.

(2) A member who reaches mandatory retirement age may not be allowed creditable service for services rendered after the mandatory retirement date or contribute to the retirement system after this date.

History: En. Sec. 35, Ch. 566, L. 1981.

Cross-References

PERS — eligibility for service retirement, 19-3-901.

Judges' retirement — eligibility for service retirement, 19-5-501.

Highway patrol retirement — compulsory retirement allowance, 19-6-504.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Game wardens' retirement — time of retirement, 19-8-601.

Police retirement — statewide plan — eligibility for service retirement, 19-9-801.

Police retirement — local funds — eligibility for service retirement, 19-10-401.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — eligibility for pension benefits, 19-12-401.

19-13-703. Application for service retirement. On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

History: En. Sec. 36, Ch. 566, L. 1981.

Cross-References

Highway patrol retirement — eligibility and application for service retirement allowance, 19-6-501.

Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.

Police retirement — statewide plan — application for service retirement, 19-9-803.

19-13-704. Amount of retirement allowance. (1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701(1) and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701(1) and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or if the surviving spouse dies or remarries and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who:

(a) is eligible under 19-13-701(1) shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service;

(b) is eligible under 19-13-701(2) shall receive a service retirement allowance equal to one-half his final average salary;

(c) is retired under 19-13-701(2) and who was theretofore eligible at his option to be retired under 19-13-701(1) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2)(a).

History: **En. Sec. 37, Ch. 566, L. 1981.**

Cross-References

PERS — amount of retirement allowance, 19-3-904.

Teachers' retirement — allowance for superannuation retirement, 19-4-804.

Judges' retirement — service retirement allowance, 19-5-502.

Highway patrol retirement — service retirement allowance, 19-6-502.

Sheriffs' retirement — service retirement allowance, 19-7-503.

Game wardens' retirement — service retirement allowance, 19-8-603.

Police retirement — statewide plan — amount of retirement allowance, 19-9-903.

Police retirement — local funds — service retirement allowance, 19-10-501.

Firefighters' retirement — service pension, 19-11-602.

Volunteer Firefighters' Compensation Act — pension benefits, 19-12-404.

Part 8

Disability Retirement

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

Teachers' retirement — disability retirement, Title 19, ch. 4, part 9.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

19-13-801. Board's determination of disability. The board shall determine whether a member has become totally and permanently disabled. In making this determination, the board, any board member, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and shall pay compensation for those medical services and advice.

History: **En. Sec. 38, Ch. 566, L. 1981.**

Cross-References

Officers who may administer oaths, 1-6-101.

Administrative hearing, 2-4-612.

PERS — disability — determination by Board, 19-3-1003.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Judges' retirement — disability — determination by Board, 19-5-611.

Highway patrol retirement — disability — determination by Board, 19-6-611.

Sheriffs' retirement — disability — determination by Board, 19-7-611.

Game wardens' retirement — disability — determination by Board, 19-8-711.

Police retirement — statewide plan — Board's determination of disability, 19-9-901.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

Depositions, Rules 30 and 31, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

19-13-802. Eligibility for disability retirement. If a member is determined by the board to be totally and permanently disabled, he is entitled to receive a disability retirement allowance, regardless of the length of his service, beginning the first day after the date on which he became totally and permanently disabled.

History: **En. Sec. 39, Ch. 566, L. 1981.**

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.

Teachers' retirement — eligibility for disability retirement, 19-4-901.

Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.

Police retirement — local funds — eligibility for disability retirement, 19-10-402.

Volunteer Firefighters' Compensation Act — eligibility for disability and death benefits, 19-12-501.

19-13-803. Amount of disability retirement allowance. (1) A member hired before July 1, 1981, who is eligible under 19-13-802:

(a) before completing 20 years of service shall receive a disability retirement allowance equal to one-half the monthly compensation last received by the member for his services as an active firefighter;

(b) after completing 20 years or more of service shall receive the disability retirement allowance provided in subsection (1)(a) increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-802:

(a) before completing 25 years of service shall receive a disability retirement allowance equal to one-half his final average salary;

(b) after completing 25 years or more of service shall receive the disability retirement allowance provided in subsection (2)(a) increased at a rate of 2% for each year in excess of 25, up to a maximum of 5 years of additional service.

History: **En. Sec. 40, Ch. 566, L. 1981.**

Cross-References

PERS — allowance for duty-related disability, 19-3-1007.

PERS — allowance for nonduty-related disability, 19-3-1008.

Teachers' retirement — allowance for disability retirement, 19-4-902.

Judges' retirement — disability retirement allowance, 19-5-601.

Highway patrol retirement — disability retirement allowance, 19-6-601.

Sheriffs' retirement — disability retirement allowance, 19-7-601.

Game wardens' retirement — disability retirement allowance, 19-8-701.

Police retirement — statewide plan — disability — amount of retirement allowance, 19-9-903.

Police retirement — local funds — disability retirement allowance, 19-10-502.

Firefighters' retirement — disability pension, 19-11-604.

Volunteer Firefighters' Compensation Act — disability benefits, 19-12-504.

19-13-804. Medical examination of disability retiree — cancellation of allowance. (1) The board in its discretion may require the recipient of a disability retirement allowance to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the duties required by his position. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, his disability retirement allowance shall be canceled. The board shall notify the recipient of this determination and the cancellation of his allowance.

(2) The cancellation of a disability allowance because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit.

History: En. Sec. 41, Ch. 566, L. 1981.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — medical examination of disability retiree, 19-4-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Judges' retirement — medical examination of disability retiree — cancellation of allowance, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of allowance, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of allowance, 19-7-612.

Game wardens' retirement — medical examination of disability retiree — cancellation of allowance, 19-8-712.

Volunteer Firefighters' Compensation Act — medical review of certain disability retirees, 19-12-408.

19-13-805. Reinstatement upon termination of allowance. (1) (a) An inactive member whose disability retirement allowance is canceled as provided in 19-13-804 shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity if an appropriate vacancy exists within his fire department. The board shall advise the employer that the disability retirement allowance has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(b) If no appropriate vacancy exists within an inactive member's fire department when his disability allowance is canceled under 19-13-804, his allowance must be reinstated until a vacancy occurs.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under 19-13-804, he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly.

History: **En. Sec. 42, Ch. 566, L. 1981.**

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1102.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-4-905.

Police retirement — statewide plan — disability — reinstatement upon termination of allowance, 19-9-905.

Volunteer Firefighters' Compensation Act — cancellation and reinstatement of certain pensions, 19-12-409.

Part 9

Death and Survivor Benefits

Part Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — death benefits, Title 19, ch. 4, part 10.

Judges' retirement — disability retirement and death benefits, Title 19, ch. 5, part 6.

Highway patrol retirement — disability retirement and death benefits, Title 19, ch. 6, part 6.

Sheriffs' retirement — disability retirement and death benefits, Title 19, ch. 7, part 6.

Game wardens' retirement — disability retirement and death benefits, Title 19, ch. 8, part 7.

Police retirement — statewide plan — disability retirement and death benefits, Title 19, ch. 9, part 9.

Volunteer Firefighters' Compensation Act — disability and death benefits, Title 19, ch. 12, part 5.

19-13-901. Payment of service or disability allowance upon death of member. A member's service or disability allowance shall be paid first to the member during his lifetime and, upon his death, to his surviving spouse as long as such spouse remains unmarried. If upon a member's death he leaves no surviving spouse, or upon the death or remarriage of a surviving spouse, his allowance shall be paid to his dependent children as long as they remain dependent as defined in 19-13-104.

History: **En. Sec. 43, Ch. 566, L. 1981.**

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Teachers' retirement — allowances for death of member, 19-4-1001.

Judges' retirement — payments upon employment-related death, 19-5-603.

Highway patrol retirement — payments upon employment-related death, 19-6-603.

Sheriffs' retirement — payments in case of death before retirement, 19-7-604.

Game wardens' retirement — payments upon employment-related death, 19-8-703.

Police retirement — statewide plan — death benefits, 19-9-911.

Police retirement — local funds — death benefits, 19-10-503.

Volunteer Firefighters' Compensation Act — death benefit, 19-12-505.

19-13-902. Survivorship allowance. (1) (a) Upon the death before retirement of an active member hired before July 1, 1981, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, receive a survivorship allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. If the member leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received as long as the children remain dependent as defined in 19-13-104.

(b) If the deceased member completed over 20 years of service, the survivorship allowance provided in subsection (1)(a) must be increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, receive a survivorship allowance equal to one-half of the member's final average salary. If the firefighter leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received, as long as the children remain dependent as defined in 19-13-104.

History: En. Sec. 44, Ch. 566, L. 1981.

Cross-References

PERS — amount of survivorship allowance, 19-3-1205.

Firefighters' retirement — pensions to surviving spouses and children, 19-11-605.

19-13-903. Payment of death benefits in absence of spouse or child. If a member dies without leaving a surviving spouse or child and if the member had designated a beneficiary in writing to the administrator, the administrator shall pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before his death. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, this amount must be paid to the member's estate.

History: En. Sec. 45, Ch. 566, L. 1981; amd. Sec. 6, Ch. 186, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for "If a member dies without leaving a surviving spouse or children, the administrator shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the administrator, the administrator shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate."

Cross-References

PERS — survivorship allowance elected by beneficiary, 19-3-1204.

Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-11-607.

Part 10

Benefits in General

Part Cross-References

Teachers' retirement — benefits in general, Title 19, ch. 4, part 7.

Judges' retirement — benefits in general, Title 19, ch. 5, part 7.

Highway patrol retirement — benefits in general, Title 19, ch. 6, part 7.

Sheriffs' retirement — benefits in general, Title 19, ch. 7, part 7.

Game wardens' retirement — benefits in general, Title 19, ch. 8, part 8.

Police retirement — statewide plan — benefits in general, Title 19, ch. 9, part 10.

Police retirement — local funds — benefits, Title 19, ch. 10, part 5.

Firefighters' retirement — benefits, Title 19, ch. 11, part 6.

19-13-1001. Retirement allowances to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in monthly installments and may not be increased or decreased, except as specifically provided in this chapter.

History: En. Sec. 47, Ch. 566, L. 1981.

Cross-References

PERS — frequency of allowance payments, 19-3-1402.

Teachers' retirement — payments to be monthly, 19-4-703.

Judges' retirement — payments to be monthly and fixed, 19-5-702.

Highway patrol retirement — payments to be monthly and fixed, 19-6-702.

Sheriffs' retirement — payments to be monthly and fixed, 19-7-702.

Game wardens' retirement — payments to be monthly and fixed, 19-8-802.

Police retirement — statewide plan — payment of retirement allowances, 19-9-1001.

Volunteer Firefighters' Compensation Act — payment of pension benefits, 19-12-407.

19-13-1002. Correction of erroneous payments. If any change in records fraudulently made or any mistake in records inadvertently made results in any member, survivor, or beneficiary receiving more or less than he was entitled to, then, on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

History: En. Sec. 48, Ch. 566, L. 1981.

Cross-References

PERS — adjustment of errors in payments, 19-3-1403.

Teachers' retirement — adjustment of allowance, 19-4-904.

Judges' retirement — correction of erroneous payments, 19-5-703.

Highway patrol retirement — correction of erroneous payments, 19-6-704.

Sheriffs' retirement — correction of erroneous payments, 19-7-704.

Game wardens' retirement — correction of erroneous payments, 19-8-804.

Police retirement — statewide plan — correction of erroneous payments, 19-9-1003.

19-13-1003. Exemption from taxes. Any money received as a retirement allowance in accordance with the provisions of this chapter is exempt from any state or municipal tax.

History: En. Sec. 49, Ch. 566, L. 1981.

Cross-References

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — exemption from taxes, 19-9-1005.

19-13-1004. Protection from legal process — unassignability. The benefits payable under this chapter are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. No member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

History: En. Sec. 50, Ch. 566, L. 1981.

Cross-References

Benefits tax exempt, 15-30-111.

PERS — exemption from taxes and legal process, 19-3-105.

Teachers' retirement — exemption from taxation and legal process, 19-4-706.

Judges' retirement — exemption from taxes and legal process, 19-5-704.

Highway patrol retirement — exemption from taxes and legal process, 19-6-705.

Sheriffs' retirement — exemption from taxes and legal process, 19-7-705.

Game wardens' retirement — exemption from taxes and legal process, 19-8-805.

Police retirement — statewide plan — protection from legal process — nonassignability, 19-9-1006.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-11-612.

19-13-1005. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan that permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the administrator and paid directly by the administrator to the insurance carrier. To qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. Sec. 51, Ch. 566, L. 1981.**

Cross-References

PERS — withholding of group insurance premium from retirement benefit, 19-3-1404.

Judges' retirement — withholding of group insurance premium from retirement benefit, 19-5-705.

Highway patrol retirement — withholding of group insurance premium from retirement benefit, 19-6-706.

Sheriffs' retirement — withholding of group insurance premium from retirement benefit, 19-7-706.

Game wardens' retirement — withholding of group insurance premium from retirement benefit, 19-8-806.

Police retirement — statewide plan — withholding of group insurance premium from retirement benefit, 19-9-1008.

Volunteer Firefighters' Compensation Act — payments to volunteer fire companies maintaining group insurance, 19-12-103.

19-13-1006. Supplement to certain retirement allowances. (1) The plan shall pay to each firefighter retired before July 1, 1973, or his surviving spouse or children a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city. If the city that last employed him as a firefighter no longer employs a full-paid firefighter, the firefighter's or his beneficiary's allowance may not be less than one-half the average regular monthly salary paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter. In the case of volunteer firefighters, the retirement allowance may not exceed $75 per month. Distribution of the money provided for this purpose under 19-11-606(1) shall be made according to subsection (2).

(2) At the beginning of each fiscal year the administrator shall request and the state auditor shall issue from the state special revenue fund and deliver to the administrator an amount certified to be equal to the total annual dollar difference between the total retirement allowances paid to all retirees or their surviving spouses or children in the previous fiscal year and

the total benefits payable on June 30, 1973. The administrator shall deposit this money into the fund.

History: **En. Sec. 52, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 468, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 277, in (2), substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 468 made substantial changes to the entire section as follows: in first sentence of (1), following "spouse" changed "and" to "or", inserted second sentence, and made minor changes in phraseology; and in (2) substituted language in first sentence following "between" for "what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding", and substituted language following "The administration shall" for "use the funds to increase the monthly retirement allowances of the retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the respective city or town for the preceding year".

Cross-References

PERS — adjustment of allowance for certain members, 19-3-905.

Teachers' retirement — increase in allowances of certain retirees, 19-4-707.

Police retirement — statewide plan — supplement to certain pensions, 19-9-1007.

Police retirement — local funds — supplement to certain pensions, 19-10-506.

Firefighters' retirement — supplement to certain pensions, 19-11-606.

19-13-1007. Allowance adjustment. (1) For a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or his surviving spouse or dependent children, the service retirement allowance provided in 19-13-704(1)(a), the disability retirement allowance provided in 19-13-803(1), and the survivorship allowance provided in 19-13-902(1) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed him as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, or his surviving spouse or dependent children, the disability retirement allowance provided in 19-13-803(2) and the survivorship allowance provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed him as a firefighter, as provided each year in the budget of that city.

(3) If after a member retires, the city that last employed him no longer employs a full-paid firefighter, the member's or his beneficiary's allowance under subsections (1) and (2) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter.

(4) If the employment of a vested member hired before July 1, 1981, is involuntarily discontinued before he reaches age 50 because of the termination of employment of all full-paid firefighters in the city that employed him, his service retirement allowance provided in 19-13-704(1)(b) and his spouse's or dependent child's survivorship allowance provided in 19-13-902(1) may not be less than:

(a) if the member has completed 20 years or more of service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter; or

(b) if the member has completed more than 10 but less than 20 years of service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter, for each year of the member's service.

(5) In lieu of the benefit adjustment provided in subsection (4), a member may elect to receive an early retirement allowance, beginning upon termination of employment, that is the actuarial equivalent of the accrued portion of the service retirement allowance that would have been payable to him beginning at age 50.

History: En. Sec. 46, Ch. 566, L. 1981; amd. Sec. 3, Ch. 468, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or his surviving spouse" for "a member hired on or after July 1, 1973, but before July 1, 1981, and his surviving spouse"; and inserted (3), (4), and (5).

DOES NOT
CIRCULATE